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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

UNITED STATES OF AMERICA	*
	*
v.	* 09-CR-30-01/02-GZS
	* July 8, 2009
	* 8:20 a.m.
EDWARD BROWN and ELAINE BROWN	*
	*
* * * * *	*

Day 7
Morning Session
EXCERPT OF TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE GEORGE Z. SINGAL
and a jury

Appearances:

For the Government:	Arnold Huftalen, AUSA Terry Ollila, AUSA U.S. Attorney's Office 53 Pleasant Street Concord, NH 03301
For the Defendant, Edward Brown:	Michael J. Iacopino, Esq. Brennan, Caron, Lenehan & Iacopino 85 Brook Street Manchester, NH 03104
For the Defendant, Elaine Brown:	Bjorn R. Lange, Esq. Federal Defender Office 22 Bridge Street Concord, NH 03301
Court Reporter:	Diane M. Churas, LCR, CRR Official Court Reporter U.S. District Court 55 Pleasant Street Concord, NH 03301 (603) 225-1442

1 I N D E X

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3 WITNESS: DIRECT CROSS REDIRECT RECROSS

4 EDWARD BROWN
 By Mr. Huftalen 9 33
 5 By Mr. Lange 20
 By Mr. Iacopino 22

6 CHRISTINE ARVIZU
 7 By Mr. Lange 35
 By Mr. Huftalen 43

8 SHAWN FARNSWORTH
 9 By Mr. Lange 45
 By Mr. Huftalen 52
 10 By Mr. Iacopino 55

11 SUSAN BERGE
 By Mr. Lange 57
 12 By Mr. Huftalen 68

13 DAVID VONKLEIST
 By Mr. Lange 73

14 DAVID HATCH-BERNIER
 15 By Mr. Lange 94
 By Mr. Huftalen 99
 16 By Mr. Iacopino 102

17 EXHIBITS: ID Evd.
 Defendant's Exhibit 2D-1 72
 18 Government's Exhibit 34a-3 78
 Defendant's Exhibit 2P 96
 19 Defendant's Exhibit 2E-5 103

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1 IN CHAMBERS

2 THE COURT: Mr. Iacopino, you've had an
3 opportunity to talk to your client?

4 MR. IACOPINO: I have twice, your Honor.

5 THE COURT: Pardon me?

6 MR. IACOPINO: I have twice.

7 THE COURT: Is he ready to proceed?

8 MR. IACOPINO: He is ready. Yesterday he
9 indicated that he believes he would be able to follow
10 the judge's instructions. I will report to you though
11 this morning he's rather agitated.

12 THE COURT: We'll do the best we can. We'll
13 try to give him as fair a trial as he allows us to do.

14 MR. IACOPINO: Your Honor, in fairness, I
15 do -- the government represented they have about ten
16 more minutes of cross-examination. I do intend to
17 redirect.

18 THE COURT: I'm not going to hold the
19 government to the ten minutes, and you certainly can
20 redirect after Mr. Lange has an opportunity.

21 Number two, Mr. Lange, at some point when you
22 do decide whether your client is going to testify, if
23 she's not going to testify let me know so I can make
24 sure on the record that she understands her rights with
25 regard to her testimony.

1 MR. LANGE: I will need to speak to her
2 briefly.

3 THE COURT: Anytime. I just wanted to remind
4 me and you in that regard.

5 Finally, with regard to a couple of potential
6 witnesses, I think of Mr. Lange, is Christine Arvizu; is
7 that correct?

8 MR. LANGE: Yes, your Honor.

9 THE COURT: Of White River Junction, New
10 Hampshire?

11 MR. LANGE: Of Vermont.

12 THE COURT: Vermont?

13 MR. HUFTALEN: It's right across the river
14 from Lebanon.

15 THE COURT: And Sean Farnsworth of Rumney, New
16 Hampshire?

17 MR. LANGE: Yes, sir.

18 THE COURT: Those were late additions after we
19 went through jury selection.

20 MR. LANGE: They were.

21 THE COURT: I'm going to ask the jury if any
22 of them know them. If any of them do, we may have an
23 issue because even though I preliminarily agreed to let
24 them go, if we are going to have a problem, they may be
25 out.

1 MR. LANGE: I understand.

2 THE COURT: Anything else, counsel? Go ahead.

3 MR. HUFTALEN: Yes. Last night I received an
4 e-mail at 8:35 from Inspector LaBier who's the case
5 agent for this case informing me that some posts
6 appeared on the Newhampshireunderground.com log site or
7 website. Those posts appear to indicate that Kat, with
8 a K, Kanning, with a K, who's a fairly vocal supporter
9 of the Browns and who I'm told was in court yesterday is
10 attempting to ascertain the identity of one of the
11 jurors. There were comments asking whether or not it is
12 a security person in this courthouse, some posts in
13 response to that with a photograph, which I didn't see,
14 but her response is, okay, thanks but that's not him.

15 I think it may be the security person in
16 Keene. Given the history of this case and the threats
17 that have been made against a number of people and
18 public comments which are not part of the record, and
19 I'm not trying to put them in the trial record here, by
20 Mr. Brown concerning the jurors in the last trial, I'm
21 extremely concerned.

22 I did two minutes' worth of research this
23 morning of First Circuit law with respect to anonymous
24 juries, and I don't know what the Court's options are,
25 but if there's a way to order that the identities of the

1 jurors which have not yet been made public remain
2 anonymous for a certain period of years, I think it
3 would be prudent to do.

4 THE COURT: All right. I'm going to get
5 counsel on both sides to think about that, government.

6 MR. IACOPINO: I didn't understand one thing
7 that Mr. Huftalen said. You said something about it
8 being Keene?

9 MR. HUFTALEN: I will give you the copy of the
10 posts and you can look at that.

11 THE COURT: Counsel, put together whatever
12 authority you'd like in this regard and I will talk to
13 you tomorrow morning with regard to where we go on that
14 issue.

15 MR. HUFTALEN: Thank you.

16 MR. LANGE: Your Honor, I assume you have not
17 changed your mind at this point with regard to a
18 justification instruction.

19 THE COURT: I have an open mind on the issue.
20 I think it's a tough hill to climb with the defendants.
21 I'm convincible. But I have to be blunt with you, it
22 seems difficult under the circumstances, though please
23 understand that -- file whatever you want and try to
24 persuade me however you wish. It's a difficult issue
25 under the best of circumstances, for instance, the Lahey

1 case, very difficult here under these circumstances.

2 But I'm convincible.

3 MR. LANGE: Thank you.

4 MR. HUFTALEN: Mr. Iacopino, you can keep that
5 copy of the blogs that are referred to, and I will get
6 copies for Mr. Lange.

7 THE COURT: First thing we're going to do is
8 I'm going to talk to the jury and ask about these names.
9 If someone knows them I will call them over to side bar
10 and see where we go. If no one does, then we'll move
11 along. Have your client not on the stand.

12 MR. IACOPINO: Okay.

13 THE COURT: Have him next to you because it
14 may be necessary for us to talk to a juror at side bar.
15 Anything else, counsel?

16 MR. HUFTALEN: No.

17 THE COURT: All right. See you in court.

18 BEFORE THE COURT

19 MR. HUFTALEN: One matter, your Honor.
20 Yesterday I read into the record a stipulation to
21 Government's Exhibit 46, and you instructed me to read
22 it to the jury when we came back and I didn't.

23 THE COURT: All right. We'll do it right now.
24 First I'm going to take care of the witness issues and
25 then you can read it in front of the jury. Bring in the

1 jury, please.

2 THE CLERK: Yes, your Honor.

3 BEFORE THE JURY

4 THE COURT: Members of the jury, good morning.

5 Thank you for being so prompt this morning. You
6 remember that during the jury selection process I read a
7 list of possible witnesses to find out if anybody knew
8 anyone. I have two more names as possible witnesses. I
9 don't know if they will be or not obviously. If
10 anybody -- does anybody know, have any personal
11 relationship, relative of, etc., of Christine Arvizu of
12 White River Junction, Vermont? Just raise your hand if
13 the answer is yes.

14 All right. There's no one raising their hand.
15 Number two, Sean Farnsworth of Rumney, New Hampshire.
16 No one raised their hand. All right. Thank you very
17 much, members of the jury.

18 And Mr. Huftalen.

19 MR. HUFTALEN: Thank you, your Honor. The
20 government and counsel for the defendants and the
21 defendants through them have reached a stipulation which
22 I'd like to read into the record at this time.

23 THE COURT: You may. Ladies and gentlemen,
24 you remember I told you at the beginning during my
25 preliminary instructions that sometimes the two sides or

1 the three sides will agree on something; so it's not
2 necessary to present a witness. This is such a
3 stipulation. Go ahead.

4 MR. HUFTALEN: Thank you, your Honor. It's
5 marked as Government Exhibit 46 and it's captioned in
6 this case and reads as follows: Stipulation, the
7 government and both defendants, Edward Brown and Elaine
8 Brown through respective undersigned counsel, stipulate
9 that Government Exhibits 8b, 8c, 8d, 8e, 8f, 8g, 8h, 8i,
10 8j, 8k, 8L, 8m, 8n, 8o, 8p, 8q, 8r, 8s, 8t, 8u, 8v, 8w,
11 9a, 9b-1, 9b-2, 9b-3, 9c-1 through 9c-10, 9c-11, 9c-12,
12 9d, 9e-1 through 9e-7, 9f-1 and 11j all contain
13 gunpowder. And then there are signatures of counsel.

14 THE COURT: All right. Ladies and gentlemen
15 of the jury, you can accept that evidence as true, give
16 it whatever weight you believe that it deserves.
17 Anything else with regard to that stipulation, counsel?
18 I hear nothing.

19 MR. HUFTALEN: Nothing.

20 THE COURT: All right. And, Mr. Brown, you
21 may take the stand. Please be seated. You are still
22 under oath. You may proceed.

23 MR. HUFTALEN: Thank you.

24 CROSS-EXAMINATION (cont'd)

25 BY MR. HUFTALEN:

1 MR. HUFTALEN: Mr. Brown, good morning.

2 Q. Mr. Brown, during Mr. Lange's opening
3 statement when you were in the courtroom, you heard him
4 say that your wife returned to you after having spent
5 some time away from the home in January and February of
6 2007. Is that true?

7 A. She returned to me; that's correct.

8 Q. And before returning to you, she had been
9 living in Massachusetts. Is that what you understood?

10 A. Yes, yes.

11 Q. Mr. Lange described her as a -- I believe one
12 of the words he used was a devoted wife. Would you
13 agree with that characterization?

14 A. Absolutely. We have been together 24 years.

15 Q. You consider your relationship with your wife
16 to be an important and sincere relationship?

17 A. There is nothing more important to me in the
18 world than my wife except God.

19 Q. And would it be fair to say that over the
20 years you've come to share beliefs?

21 A. We're on the same path in life.

22 Q. And with respect to some of the beliefs that
23 you articulated yesterday concerning fear of the
24 government, does she share those with you?

25 A. Sir, I am the government in this country. I

1 don't fear myself. I fear the criminal element in
2 government. The public service changed the direction of
3 their endeavors in terms of how they represent us.

4 Q. Mr. Brown, while you and your wife were at
5 your home between February of 2007 and October of 2007
6 you made a number of statements through the media. Is
7 that right?

8 A. That's correct.

9 Q. And oftentimes you made statements through
10 radio shows, be they local broadcasts or Internet radio.
11 Is that also true?

12 A. Yes.

13 Q. And is it also true that on many occasions you
14 and your wife were together speaking, each of you,
15 during those radio broadcasts?

16 A. Yes.

17 Q. In particular are you familiar with the
18 Republic Broadcast Network?

19 A. I'm familiar with it.

20 Q. Known commonly as RBN?

21 A. Yes.

22 Q. RBN, or the Republic Broadcast Network,
23 carried on almost a daily radio show called Ed Brown
24 Under Siege; is that right?

25 A. That's correct.

1 Q. And you oftentimes called in and spoke with a
2 host and with callers on that show; did you not?

3 A. Yes.

4 Q. And on a number of occasions did your wife
5 participate in those conversations with you?

6 A. Yes.

7 Q. Would it be fair to characterize those
8 comments by you as comments to your supporters?

9 A. No. To the world, sir.

10 Q. To the world. Okay. Was the purpose in those
11 statements by you to let the world know who you were and
12 what you were doing?

13 A. No. The statements were to warn the world of
14 the danger that they are in, the same as John F. Kennedy
15 did prior to his assassination.

16 Q. And with particularity, were you warning the
17 world of the dangers --

18 MR. IACOPINO: Objection, your Honor. May we
19 approach?

20 THE COURT: You may.

21 AT SIDE BAR

22 THE COURT: Go ahead.

23 MR. IACOPINO: Your Honor, I object. This is
24 well beyond the scope of direct examination. It's an
25 area in which I was actually prohibited from addressing

1 this particular witness on direct examination by the
2 Court, and it's political statements that are irrelevant
3 to the issues before the Court. On that basis, your
4 Honor, I don't think he should be permitted this line of
5 cross-examination.

6 I would also point out that although I respect
7 Mr. Huftalen, I think that this line of
8 cross-examination could be perceived to be an effort to
9 agitate this defendant in his behavior on the witness
10 stand.

11 THE COURT: I don't think your client is being
12 agitated at all. I think he's much calmer than he was
13 yesterday. And number two, I think these are
14 preliminary questions; so Mr. Huftalen is trying to set
15 a foundation for later questions and I'm going to deny
16 it.

17 MR. HUFTALEN: Yes. Thank you.

18 IN OPEN COURT

19 Q. Mr. Brown, let me ask you that question in a
20 different way. Would it be fair to say that your
21 comments on RBN on the Ed Brown Under Siege radio show
22 during the time frame between February '07 and October
23 '07 were designed by you in particularity to warn the
24 world, as you say, of the dangers specifically
25 identified in your particular situation?

1 A. No.

2 Q. Did you speak about your particular situation,
3 and by that I mean the fact that you were at your home
4 and that the Marshal Service was making attempts to
5 arrest you.

6 A. Well, of course they weren't there to arrest
7 me. They were attempting to create a scenario of arrest
8 and allusion that we were the bad guys. That's all they
9 were doing. They had to do it that way. That's why
10 they didn't try to speak to us a few weeks earlier in a
11 public manner.

12 Q. Mr. Brown, do you remember speaking on that
13 show on March 20th, 2007, with your wife by your side
14 speaking as well about the position you had taken?

15 A. How could I know? I don't remember any
16 particular date. I don't remember most of the
17 conversations we've had or things I've even said over
18 the year.

19 Q. Let me ask you with particularity, do you
20 recall on March 20, 2007, in response to statements by
21 you that people had to make a stand, your wife said, and
22 I quote, you've got to defend with all the force you
23 need to defend with. Do you recall words to that
24 effect?

25 A. No. But I maintain on the stand absolutely

1 the position that all Americans have had to take from
2 its inception, this country since its inception against
3 the same people, and it's happening again now with the
4 same people by the way.

5 Q. Let me ask you if you recall immediately
6 thereafter those statements by she that you said: And
7 how far and much force will you need to do if necessary
8 under the law? Do you remember saying that?

9 A. No. But whatever the law dictates. I would
10 have probably stated something that the law had said or
11 one of our forefathers had said more than likely.

12 Q. And do you remember in response to your
13 question Mrs. Brown saying on March 20th, '07, "To the
14 death." Do you recall her using those words?

15 A. Sir, I don't recall words that were used from
16 my wife this morning barely. No. She may have said
17 that. I don't know. If it's recorded, you would know
18 that already, and if that's the case, that's the case.
19 I don't remember personally, no.

20 Q. And do you recall whether or not in response
21 to that you said, "To the death. Do you hear it, ladies
22 and gentlemen?"

23 A. Oh, sir, again, I repeat to you. This country
24 was founded to take that kind of position. We live in a
25 live free or die state. Do you understand what that

1 means, sir?

2 Q. Mr. Brown, about a minute and a half or a
3 minute and 40 seconds later, do you recall your wife
4 saying, "We don't know how this will end, but there's
5 only two ways we're coming out of here, as a free man
6 and a free woman or in body bags." Do you recall her
7 saying that?

8 MR. IACOPINO: Objection, hearsay.

9 THE COURT: Overruled.

10 A. I'm sorry, I don't remember her saying that.
11 If I clearly remembered, I would tell you that. I don't
12 remember her saying that.

13 Q. Do you remember her using that phrase numerous
14 times in many public statements thereafter?

15 A. She may have even heard me use that statement,
16 you know, if that's the case. The federal government
17 has used it several times and that's probably why you
18 originally had picked it up.

19 THE COURT: The jury will disregard the last
20 part.

21 THE WITNESS: Of course.

22 THE COURT: Mr. Brown, don't start.

23 THE WITNESS: Of course. You asked me --

24 THE COURT: Mr. Brown --

25 THE WITNESS: -- to speak the whole truth,

1 sir. I will speak the whole truth and nothing but the
2 truth so help me God. If you try to delay me, sir,
3 we'll have this confrontation.

4 THE COURT: Mr. Brown, you have to obey the
5 rules of the court.

6 THE WITNESS: Sir, there are no rules except
7 the ones that you make, sir, for your own personal
8 enrichment. That's a fact of record. Would you like to
9 have me bring that record forward, sir, to show the
10 jury? I will be glad to do so.

11 THE COURT: Jury's excused.

12 THE WITNESS: Yes.

13 (Jury left courtroom.)

14 BEFORE THE COURT

15 THE COURT: Mr. Brown, you can go back to your
16 counsel. Be seated. I'll hear from the government with
17 regard to possible sanctions.

18 MR. HUFTALEN: Your Honor, although there are
19 a number of other questions I'd like to ask Mr. Brown, I
20 believe I've had a fair and full opportunity to
21 cross-examine him and I will ask no further questions at
22 this point, and I would request that his, both direct
23 and cross, not be stricken from the record. With
24 respect to his continuing misbehavior, I respectfully
25 request that if he continues to interrupt the

1 proceedings, that he be removed from the courtroom.

2 THE COURT: Mr. Iacopino, your position?

3 MR. IACOPINO: Your Honor, we certainly oppose
4 any decision by the Court to strike Mr. Brown's direct
5 testimony, and in doing so I would rely on United States
6 versus Bartelho, 129 Fed. 3d, 663, which in summary
7 states that if defendant's behavior interferes with the
8 cross-examination and prohibits the government from
9 getting a fair cross-examination, then the appropriate
10 remedy might be to strike his direct testimony -- strike
11 all of his testimony.

12 However, your Honor, I don't think that that's
13 been the case here. The government's made a
14 representation to you they believe they have had a full
15 and fair opportunity to cross-examine the defendant, and
16 I would point out for the record that the defendant's
17 comments that are causing difficulty here are not in
18 terms of providing information in the questions. They
19 are in nature of the defendant's remarks towards the
20 Court. And I don't think that these cases address that,
21 and I don't think that an appropriate remedy for a
22 contemptuous remark to the judge is in fact the striking
23 of the testimony. I think that's where you are
24 required, your Honor, to balance the defendant's Sixth
25 Amendment right to a trial and to a fair trial and to

1 his right to testify against what other sanctions you
2 might impose on a condemnor in your court. I think the
3 appropriate way to deal with any sanctions for contempt,
4 your Honor, would be in a separate hearing at the
5 conclusion of these proceedings and not during the
6 course of these proceedings. And that would be our
7 response to you.

8 THE COURT: All right. Mr. Lange, do you have
9 a position?

10 MR. LANGE: Yes, your Honor. I would ask that
11 his testimony not be stricken.

12 THE COURT: All right. I'm not going to
13 strike his testimony at this point. Mr. Brown has in
14 the way he's answering the questions, refusing to answer
15 the questions directly, and is deliberately refusing to
16 obey the rules of court. I'm warning Mr. Brown that if
17 he continues his disruptive behavior, he will be removed
18 from the courtroom, just so he's aware of what happens.
19 That will happen even though he's in the midst of being
20 examined. He can return to the courtroom if he promises
21 to obey the court rules. Are we ready for the jury?

22 MR. HUFTALEN: Government's ready.

23 MR. IACOPINO: Yes, your Honor.

24 THE COURT: Bring in the jury.

25 BEFORE THE JURY

1 THE COURT: Mr. Brown, you may resume the
2 stand.

3 MR. HUFTALEN: No further questions, your
4 Honor.

5 THE COURT: Thank you. Mr. Lange?

6 CROSS-EXAMINATION

7 BY MR. LANGE:

8 MR. LANGE: Good morning, sir.

9 THE WITNESS: Good morning, sir.

10 MR. LANGE: I just have a couple points I want
11 to clarify.

12 Q. First of all with regard to the Tannerite
13 that's been discussed during the course of this trial,
14 what part, if any, did Elaine play with regard to
15 anything involving the Tannerite?

16 A. Nothing.

17 Q. With regard to the Goex cans or the various
18 other cans of black powder, some of which were described
19 as having a fuse in the top and some of which were
20 described as having nails taped around them, what part,
21 if any, did Elaine have with regard to any of those
22 items?

23 A. Nothing.

24 Q. There was a basket of -- looked like plumbing
25 parts, items had been assembled that several of the ATF

1 witnesses testified about. Do you remember where that
2 basket was? There was a basket -- do you remember or
3 you don't? It was a basket. I don't remember if these
4 were the pipes with the cotter pin --

5 A. Correct.

6 Q. -- or if they were the pipes with the hole in
7 the middle. Do you remember the basket?

8 A. My wife had nothing to do with any of that --
9 those devices, nothing.

10 Q. So that's true with regard to what's been
11 described as the pipe bombs?

12 A. That's what they called them, yes.

13 Q. That's true with what has been described as
14 the zip guns or booby traps?

15 A. They were neither zip guns nor booby traps.
16 They were merely sound signaling devices. And they
17 didn't work anyway. That's why I put them back in the
18 house.

19 Q. Earlier in the trial there was a photograph of
20 a portion of a tree trunk in your yard, and there was a
21 wire going out and there was some debris around the
22 wire. What was that?

23 A. Correct. That was a test with one of the
24 sound devices to see if they would work. We found --
25 they found the one shell. I noticed it was the one --

1 we finally forced it to make it work, but they were no
2 good. The springs weren't strong enough to make them
3 work; so we got rid of them.

4 Q. What part, if any, did Elaine have with regard
5 to those items?

6 A. Nothing.

7 MR. LANGE: Those are my questions.

8 A. Wasn't even present.

9 THE COURT: Thank you, Mr. Lange. Mr.
10 Iacopino, redirect.

11 MR. IACOPINO: Thank you, your Honor. Your
12 Honor, may I just approach the witness with Exhibit 5p
13 which was introduced during cross-examination?

14 THE COURT: Of course.

15 MR. IACOPINO: I'm sorry, your Honor. I
16 should have grabbed it before.

17 THE COURT: Take your time.

18 REDIRECT EXAMINATION

19 BY MR. IACOPINO:

20 Q. Mr. Brown, I'm going to show you what was
21 marked during your cross-examination as Exhibit 5p,
22 okay? And the exhibit that was presented to you by the
23 government has one, two, three, four pages. Would you
24 just take a quick look at those four pages, and tell me
25 if pages three and four are simply another list of the

1 same guns that are contained on page one and two?

2 A. That's correct; they are just redundancies.
3 Those pages are the same as page one. Page four is the
4 same as page one.

5 Q. So anybody who reviews this exhibit should
6 understand that if -- they can't just count all the way
7 through the four pages and determine a number of weapons
8 from that.

9 A. Oh, of course not. That's how the U.S.
10 Attorney's Office operates.

11 Q. Mr. Brown, towards the end of your testimony
12 you were asked by Mr. Huftalen about comments that
13 you've made on various public radio shows. Do you
14 recall that series of questions?

15 A. Yes, sir.

16 Q. And you told him that you did in fact make
17 such comments; correct?

18 A. That's correct.

19 Q. In fact on WFRB radio in an interview with a
20 gentleman by the name of Chris Fazio did you not tell
21 the public that shots were fired by the government on
22 June 7th and that changed the whole complexion of the
23 situation?

24 MR. HUFTALEN: Objection.

25 A. Correct.

1 THE COURT: Just a second.

2 MR. HUFTALEN: Objection.

3 THE COURT: Basis?

4 MR. HUFTALEN: Hearsay.

5 MR. IACOPINO: Government's opened the door.

6 THE COURT: You're allowed.

7 Q. Did you tell the public that? That on
8 June 7th shots were fired by the government and that
9 changed the whole complexion of the situation?

10 A. That is correct.

11 Q. Did you also make a statement to the public on
12 the radio that the police had decided that they were
13 going to kill Ed and Elaine for a few bucks even though
14 Ed indicated that he would pay if the government would
15 show him the law that required him to pay it?

16 A. That's correct.

17 MR. HUFTALEN: Objection.

18 THE COURT: Just a second. Objection is
19 sustained. Jury will disregard his answer.

20 Q. Did you tell the public in a radio interview
21 of Mr. Fazio that there was no crisis situation at the
22 Brown residence prior to June 7th, but that the
23 government was trying to incite the crisis situation by
24 its actions on June 7th, but it didn't work and it
25 wouldn't work?

1 A. That's right.

2 MR. HUFTALEN: Objection, hearsay, move to
3 strike.

4 THE COURT: Sustained. The jury will
5 disregard.

6 MR. IACOPINO: Your Honor, may I approach on
7 this?

8 THE COURT: No. Move on.

9 THE WITNESS: Good job.

10 THE COURT: Hold it. Mr. Brown, out of the
11 courtroom. Take him out.

12 THE WITNESS: You'd do well for a prosecutor,
13 Judge. You'd do well.

14 THE COURT: The jury.

15 (Jury left courtroom.)

16 BEFORE THE COURT

17 THE COURT: The record will reflect that after
18 I sustained the last objection, Mr. Brown talked to the
19 Court, smirked, and muttered "good job" to the Court.
20 This is one of multiple times Mr. Brown has been
21 contemptuous, and I've warned him. He is to remain out
22 of the court until he can behave himself. We're going
23 to take a five-minute recess. Mr. Iacopino, talk to
24 your client. Tell him he's free to reenter the court
25 when he's able to behave, follow the court orders, and

1 not be contemptuous to the Court. We'll take a
2 five-minute recess.

3 (Brief recess taken.)

4 BEFORE THE COURT

5 THE COURT: Mr. Iacopino, your client I see is
6 not present.

7 MR. IACOPINO: No, he's not, your Honor, but
8 that's only because I -- when the court staff asked me,
9 I said I'd rather address you. I have spoken to my
10 client. The last thing that he indicated to me before I
11 left was that he would try to follow your instructions,
12 and so I didn't know if that was going to satisfy the
13 Court or not; so that's why I came out to report that to
14 the Court.

15 THE COURT: Mr. Lange, do you have a position?

16 MR. LANGE: No, your Honor.

17 THE COURT: Government?

18 MR. HUFTALEN: If he behaves himself, I think
19 he should be in the courtroom.

20 THE COURT: Bring Mr. Brown in, put him back
21 on the stand, please. We'll give it one more try.

22 (Mr. Brown resumed the stand.)

23 THE COURT: Ready for the jury?

24 MR. HUFTALEN: Yes.

25 THE COURT: Bring in the jury, please.

1 BEFORE THE JURY

2 THE COURT: Mr. Iacopino?

3 MR. IACOPINO: Thank you, your Honor.

4 Q. BY MR. IACOPINO: Mr. Brown, did you give an
5 interview on June 8, 2007, to Republic Broadcasting
6 Network?

7 MR. HUFTALEN: Objection. May we approach?

8 THE COURT: Yes.

9 AT SIDE BAR

10 MR. HUFTALEN: I object to the continuing line
11 of questions that Mr. Iacopino knows are going to draw
12 hearsay objections and I believe may be designed to make
13 the government look like the obstructionist in this
14 trial. To the extent he's eliciting hearsay statements
15 which are statements made by Mr. Brown, they are
16 self-serving, they are hearsay, and I don't believe
17 there's any legitimate hearsay exception upon which a
18 basis of admissibility could be made.

19 THE COURT: What's the expected response?

20 MR. IACOPINO: Your Honor, the expected
21 response is on that date he did give such a statement
22 and that he specifically told people not to come to New
23 Hampshire and that he did not want people coming up to
24 the residence. This is a day after Danny Riley was
25 tasered at the home, and I believe that the government

1 in their cross-examination has opened the door to every
2 public statement that my client's made because they have
3 picked and they have chosen amongst many to put in front
4 of this jury, and we have the right to show that my
5 client was not out there continuously making these
6 public statements that he's left the jury with the
7 impression that they have made.

8 And they started this with the indictment,
9 your Honor. The indictment contained a number of overt
10 acts that asserted that various people were making
11 public statements. Now, I understand that those have
12 been removed from the indictment at this point on my
13 motion, but the fact is that this is an issue that was
14 created by the government, and we have the right to make
15 sure that this jury understands that my client was not
16 out there continuously trying to rile people up or to
17 come up to New Hampshire or to cause violence or
18 trouble.

19 MR. LANGE: I join.

20 THE COURT: I'm not clear what exception to
21 the hearsay rule you are asserting here, either one of
22 you, Mr. Lange or Mr. Iacopino.

23 MR. LANGE: Yes, your Honor. It's the
24 doctrine of rule of completeness, once the government
25 opened the door by bringing in the defendant's

1 statements.

2 THE COURT: That's Rule --

3 MR. LANGE: 104?

4 THE COURT: It's 106, remainder of writings or
5 recorded statements. Is that the one you are talking
6 about?

7 MR. LANGE: Yes, your Honor.

8 THE COURT: Is this part of a statement that
9 the government referred to or a separate statement?

10 MR. IACOPINO: We don't know because the
11 defendant when he was questioned by the government
12 didn't know what dates he made various particular
13 statements, but the impression that's been left with
14 this jury, your Honor, from the cross-examination is
15 that my client had made -- was making such statements.
16 It also leaves the impression that my client acted
17 willfully, bringing a state of mind into state here,
18 your Honor, and I would respectfully submit that under
19 these circumstances, under both 803(3) and under the
20 catch-all provision, this is appropriate evidence to be
21 presented through his direct examination.

22 THE COURT: As far as the catch-all provision,
23 I see no indicia of reliability on that statement at
24 all. As far as Rule 106, if you can lay a foundation
25 that it was part of another statement, I will deal with

1 it. Do you have another rule that you want to refer to?

2 MR. IACOPINO: Not at this point, your Honor.

3 THE COURT: All right. That's out then.

4 IN OPEN COURT

5 Q. BY MR. IACOPINO: Mr. Brown, I'm going to
6 change tracks for a moment, okay? During your
7 cross-examination you were asked about the fact that at
8 some of the jamborees and the barbecue that was had at
9 your home, children were present. Do you recall that
10 series of questions by Mr. Huftalen?

11 A. Yes, I do.

12 Q. At any point in time when visitors came on
13 your property, were there ever booby traps set out?

14 A. No. That's in itself -- of course not.

15 Q. Were there ever any kind of explosives
16 available to anybody?

17 A. No, sir.

18 Q. Were guns left around for children to find?

19 A. No, sir.

20 Q. Was your property made safe for any children
21 and families that may come up?

22 A. That's correct, sir.

23 Q. He also asked you about those jamborees and
24 about aircraft.

25 A. Yes, sir.

1 Q. And at the second jamboree did aircraft come
2 over your home?

3 A. Yes, sir.

4 Q. Please explain to the jury what type of
5 aircraft and the conduct of that aircraft.

6 A. It was a helicopter with two or three
7 personnel inside of it. You could see them clearly
8 because they were just at treetop level. They came in
9 at approximately -- I believe it was around one o'clock,
10 around there sometime, and they stayed for eight hours
11 and hovered and circled and circled and hovered just
12 above the tops of the trees. We were concerned many
13 times throughout the day that if anything should happen,
14 if it crashes with the crowd that was down below. We
15 asked them to retire. They refused. We called the
16 Lebanon Airport. The same thing. They said that they
17 could not --

18 THE COURT: That's it. Stop. You are moving
19 into hearsay. Move on, next question.

20 Q. Is it fair to say that the aircraft bothered
21 you enough you tried to take action to stop it?

22 A. Excuse me?

23 Q. Is it fair to say that the aircraft was
24 bothersome enough that you tried to take action to stop
25 it by calling somebody with authority?

1 A. That's correct. They were like right here,
2 absolutely.

3 Q. Thank you. On June 7th, 2007, how did you
4 learn about the presence of armored cars and things of
5 that nature in the area of your home?

6 A. After a distress fire as I testified earlier
7 standing out in front, within about three or four
8 minutes or so, a cellphone rang. I picked it up. The
9 caller simply said there was APC, armored personnel
10 carrier, heading south on 12A toward our home with three
11 state troopers in cruisers in the front and three state
12 troopers in the back, and they said they had seen one
13 earlier, probably about an hour prior to that, the same
14 kind of situation.

15 Q. How did that make you feel?

16 A. I panicked almost. I decided they're coming
17 now.

18 Q. What did you think the armored personnel
19 carrier and the various state trooper vehicles -- what
20 did you think their purpose was?

21 A. I know what their purpose was. Their purpose
22 is to assault. That's what they do. That's the only
23 reason they'd be in the area is to assault.

24 Q. Assault who?

25 A. Me. Who else? I was already in speculation

1 after what's already happened prior with the helicopter
2 circling over and everything else. I knew. It was
3 building, constantly building. U.S. Attorney's Office
4 kept building them up.

5 THE COURT: All right. Ask another question.

6 Q. Why did you pick up that 50-caliber on
7 June 7th?

8 A. Defense.

9 THE COURT: Ask another question.

10 Q. Defense of what?

11 A. Defense of my life and property, my wife.

12 Q. After June 7, 2007, did you want people to
13 come up to your property?

14 A. Not like they were before, no.

15 MR. IACOPINO: Thank you. I have no further
16 questions.

17 THE COURT: Thank you, Mr. Iacopino.
18 Government, questions?

19 MR. HUFTALEN: Very, very briefly, your Honor.

20 THE COURT: Go ahead.

21 RECROSS-EXAMINATION

22 BY MR. HUFTALEN:

23 Q. The last question Mr. Iacopino asked you, I
24 think he said after June 7th you didn't want people to
25 come to your property. Is that right?

1 A. Not as much, sir.

2 Q. But it was after June 7th that you had the
3 jamboree and the barbecue and the parties; is that
4 right?

5 A. That's correct. I didn't set any of that up.
6 They came on their own, sir. After June 7th I was
7 discouraging it. They came in anyway from all over the
8 country.

9 Q. Okay. So the jamboree that was on your
10 property you didn't want to happen. It was other people
11 that came and did it?

12 A. That's correct.

13 Q. And the barbecue in July, you didn't want that
14 to happen. It was the other people who made you do
15 that?

16 A. No, I didn't. That's correct.

17 MR. HUFTALEN: Okay. Thank you. Nothing
18 further.

19 THE COURT: Mr. Lange, questions?

20 MR. LANGE: No, thank you.

21 THE COURT: Mr. Iacopino?

22 MR. IACOPINO: Nothing further, your Honor.

23 THE COURT: Thank you, Mr. Brown. You may
24 step down.

25 (End of excerpt.)

1 THE COURT: Call your next witness, Mr.

2 Iacopino.

3 MR. IACOPINO: We rest, your Honor.

4 THE COURT: All right. Mr. Lange, call your
5 first witness.

6 MR. LANGE: I call Christine Arvizu.

7 THE COURT: Let me see counsel for a moment.

8 AT SIDE BAR

9 THE COURT: Mr. Lange, are there any Fifth
10 Amendment issues with this witness?

11 MR. LANGE: No, there are none with any of the
12 witnesses that I'm aware of.

13 THE COURT: Very good. Thank you.

14 IN OPEN COURT

15 THE COURT: Swear the witness, please.

16 CHRISTINE ARVIZU

17 having been duly sworn, testified as follows:

18 THE CLERK: For the record, if you'd please
19 state your name and spell your name.

20 THE WITNESS: Christine Arvizu,
21 C-H-R-I-S-T-I-N-E, A-R-V-I-Z-U.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. LANGE:

25 MR. LANGE: Good morning, ma'am.

1 THE WITNESS: Good morning.

2 Q. What town do you live in?

3 A. White River Junction, Vermont.

4 Q. What sort of work do you do, or do you work?

5 A. Right now I don't. Since I was diagnosed with
6 cancer eight weeks ago I haven't been working.

7 Q. What kind of work were you doing before then?

8 A. I did respite care for children for the last
9 five years, and before that I did cancer research.

10 THE COURT: Move a little closer to the mike,
11 if you would, ma'am. Thank you.

12 MR. LANGE: Elaine, will you stand up.

13 Q. The woman standing up, do you know her?

14 A. Yes.

15 MR. LANGE: Thank you. You can step down.

16 Q. How do you know her?

17 A. Originally I went to her as a dentist when I
18 had a sort of out of control problem with my mouth, and
19 I met her at her dentist office.

20 Q. Was that the one in West Lebanon?

21 A. Yes.

22 Q. Do you remember approximately how long ago
23 that was?

24 A. I would say approximately two years.

25 Q. What was the difficulty that caused you to go

1 to her?

2 A. Well, I have usually gone to a dentist in
3 Canada, but I had some kind of an issue in my mouth. It
4 was a throbbing, throbbing problem and I didn't have
5 time to get up to Canada. So I'd heard she had a good
6 reputation; so I gave her a try, and she did an
7 excellent job finding out what the problem was.

8 Q. Have anything to do with your teeth?

9 A. No.

10 Q. She directed you somewhere else?

11 A. Yeah, she realized it wasn't my teeth, and she
12 was very clear about that, and she directed me to
13 consult with my doctor.

14 Q. Now, did you go back to her again as a
15 patient?

16 A. Yes, I did.

17 Q. Which office did you go to?

18 A. I went twice, one more time to her office. I
19 told her what my doctor said, and it was angio-edema and
20 wanted her to check it again, and she most graciously
21 did and was very reasonable with her charges also. And
22 then since she had such compassion towards me and was so
23 fair and considerate of me, I wanted to continue seeing
24 her as a dentist.

25 Q. That second visit, that was at the Glen Road

1 office in West Lebanon?

2 A. Yes.

3 Q. You saw her again?

4 A. Yes.

5 Q. Where?

6 A. In her home in Plainfield.

7 Q. Now, when you went to see her at her home in
8 Plainfield, was her office set up inside the home?

9 A. Yes, it was.

10 Q. Before you went out there, without being
11 specific, had you heard anything about the Browns on the
12 media?

13 A. Yes, I had.

14 Q. Based on what you had heard about the Browns,
15 how did you feel about going up to Center of Town Road
16 and going up that driveway and going to the home?

17 A. A little apprehensive because it isn't a
18 pleasant thing. You are going to a place that might be
19 as described.

20 THE COURT: Excuse me, ma'am. Could you give
21 us a time for this visit, please.

22 THE WITNESS: I don't remember. I go to the
23 dentist so often I really don't keep track of --

24 THE COURT: You don't know the year?

25 THE WITNESS: Oh, yeah, two years ago.

1 THE COURT: So it would have been 2007?

2 THE WITNESS: Yeah.

3 THE COURT: And a month?

4 THE WITNESS: It was during good weather.

5 THE COURT: Spring or summer?

6 THE WITNESS: Yeah, uh-huh.

7 THE COURT: Go ahead.

8 Q. BY MR. LANGE: What happened when you -- first
9 of all, who met you at the door?

10 A. Elaine.

11 Q. Was there any obstruction or anything that
12 prevented you from getting from the road up the driveway
13 to the door?

14 A. No, not at all.

15 Q. Knock on the door? Doorbell?

16 A. Yes.

17 Q. And Elaine met you at the door?

18 A. Yes, she did.

19 Q. Was there anybody else there when you got
20 there?

21 A. No, the first time I don't remember there
22 being anyone else there.

23 Q. Were there -- no other patients there?

24 A. Not that I saw. I wasn't really looking for
25 them, but I didn't notice anyone else.

1 Q. Did she see you right away?

2 A. I think -- yes, she did. I think there was
3 some time when I might have been there too early and had
4 to wait, but there was -- I'd say right away the first
5 time.

6 Q. And she took care of your teeth?

7 A. Yes.

8 Q. Without going into detail, what was the
9 problem?

10 A. I had a crown that kept falling off.

11 Q. You don't recall anybody else being there the
12 first time?

13 A. No.

14 Q. When you went into the house the first time,
15 were you just on the first floor?

16 A. Yes.

17 Q. Did you ever when you went to the house in
18 Plainfield go above the first floor?

19 A. No, I did not.

20 Q. Describe what you saw on the first floor.

21 A. It was a very well-decorated pleasant sort of
22 simple type home in the sense that it wasn't cluttered.
23 It was very peaceful. I really felt very much at ease
24 there, and I thought the decor was very tastefully and
25 very well done.

1 Q. Did you see any firearms?

2 A. No, I did not.

3 Q. Did you see any explosive devices?

4 A. No, I did not.

5 Q. Can you see that table over there?

6 A. Yes.

7 Q. And the table toward the other corner?

8 THE COURT: You're free to stand up.

9 A. Okay. I can see those, yes.

10 Q. Was there anything like that in your view on
11 the first visit?

12 A. No.

13 Q. And you went back?

14 A. Yes, I did.

15 Q. How much later did you go back?

16 A. I would say a week or two.

17 Q. And did you go a third time?

18 A. Yes, I did.

19 Q. And when was that?

20 A. Again, maybe a week or two apart.

21 Q. To follow up on the judge's questions, was
22 this in the summertime, warm weather?

23 A. Yes, yes.

24 Q. Did anything change with regard to what you
25 saw on the first floor the second time or the third

1 time?

2 A. No, it did not.

3 Q. Again, nothing like what's over on those
4 tables?

5 A. No, nothing whatsoever.

6 Q. Did Elaine show you around downstairs?

7 A. Yes, she did.

8 Q. Do you remember going to a concert at the
9 Brown home in Plainfield?

10 A. Yes, I did.

11 Q. Do you know whether that was in June or July?

12 A. I'm not sure. I'm thinking June, but I'm not
13 sure.

14 Q. Any idea who set the concert up?

15 A. No. All I remember, there was a group of
16 people that were supporting Ron Paul. I had heard it
17 about town or through a friend. I'm not sure who set it
18 up.

19 Q. Probably all the jurors know, but in case they
20 don't, who is or was Ron Paul?

21 A. He was a Republican that was running for
22 president.

23 Q. Without talking about what you discussed, did
24 you have conversations with Elaine during that concert?

25 A. Not very much of a conversation, just

1 pleasantries.

2 Q. Anything seem out of the ordinary with regard
3 to Elaine?

4 A. No.

5 Q. Was there anything that happened in any of
6 your visits to the Plainfield home which caused you to
7 be alarmed?

8 A. Not at all.

9 MR. LANGE: Your witness.

10 THE COURT: Thank you, Mr. Lange. Government,
11 cross-examination.

12 MR. HUFTALEN: Thank you.

13 THE COURT: Mr. Huftalen?

14 CROSS-EXAMINATION

15 BY MR. HUFTALEN:

16 Q. Ma'am, on the three occasions that you went
17 for dental visits, did you drive yourself or did someone
18 give you a ride?

19 A. I drove myself.

20 Q. And on none of those occasions did you see
21 anyone trying to stop you from going in, did you?

22 A. No.

23 Q. Did anyone try to stop you or question you as
24 you left the property?

25 A. No.

1 Q. How about when you went to the event in June
2 or July? Did anyone try to stop you either in or out?

3 A. No.

4 Q. If Elaine had asked you to give her a ride
5 into West Lebanon or back to your house, would you have?

6 A. I imagine so.

7 MR. HUFTALEN: Thank you very much. I have no
8 other questions.

9 THE COURT: Mr. Iacopino, questions?

10 MR. IACOPINO: I have no questions, your
11 Honor.

12 THE COURT: Mr. Lange?

13 MR. LANGE: I have no further questions.

14 THE COURT: Thank you. You may step down. Do
15 you wish this witness excused?

16 MR. LANGE: That's what I was going to bring
17 up. If the witnesses that I call this morning choose to
18 remain, I do not intend to call them again as witnesses
19 at any point. I don't know whether they want to remain
20 or not remain, but my request is that they be allowed to
21 if they want to.

22 MR. HUFTALEN: I have no objection if the
23 witness is excused.

24 THE COURT: Very good.

25 MR. LANGE: Call Shawn Farnsworth.

1 SHAWN FARNSWORTH

2 having been duly sworn, testified as follows:

3 THE CLERK: For the record, if you'd please
4 state your name and spell your name.

5 THE WITNESS: Shawn Paul Farnsworth,
6 S-H-A-W-N, P-A-U-L, F-A-R-N-S-W-O-R-T-H.

7 THE COURT: You may proceed, Mr. Lange.

8 DIRECT EXAMINATION

9 BY MR. LANGE:

10 MR. LANGE: Good morning, Mr. Farnsworth.

11 THE COURT: Move up to the mike so we can hear
12 you.

13 Q. Sir, what town do you live in?

14 A. Lebanon, New Hampshire.

15 Q. What do you do for work?

16 A. I'm a contractor.

17 Q. What kind of contracting do you do?

18 A. Painting, drywall, carpentry, roofing, siding.

19 Pretty much do it all.

20 Q. Is this a workday for you?

21 A. Yes, sir.

22 Q. Are you here under subpoena?

23 A. Yes.

24 Q. I want to go back to 2006. Were you working
25 on the Brown property on Center of Town Road in

1 Plainfield, New Hampshire?

2 A. Yes, sir.

3 Q. I want to turn your attention to a day in May.

4 Was there a particular day in May that stands out in

5 your mind from back then?

6 A. When the marshals showed up at the end of the

7 day. Must be the day you're talking about.

8 Q. It is. Now, when you were working on the

9 property, was Ed usually there?

10 A. Yes, sir.

11 Q. Elaine would not be there during the day?

12 A. No.

13 Q. Was Ed there that day?

14 A. No.

15 Q. What time did you get to the job site? What

16 time did you get to the Brown property?

17 A. Should have been around 7:30, 8:00 at the

18 latest.

19 Q. In the morning?

20 A. Yes, sir.

21 Q. Were either of the Browns there when you got

22 there?

23 A. No.

24 THE COURT: You said May of '06?

25 MR. LANGE: 2006. I believe it's May 24th,

1 your Honor.

2 THE COURT: All right. Go ahead.

3 Q. Do you remember what kind of work you were
4 doing that day?

5 A. I honestly don't recall.

6 Q. How long were you working at the Brown
7 property?

8 A. Off and on for a couple years.

9 Q. A fairly big job?

10 A. Yeah.

11 Q. So you also had a crew?

12 A. Yes, sir.

13 Q. How big was the crew? How many men that day?

14 A. That day, I believe there was five of us there
15 that day.

16 Q. Neither of the Browns showed up all day?

17 A. No, sir.

18 Q. What was quitting time then?

19 A. Four o'clock.

20 Q. What happened around quitting time?

21 A. We packed up tools, normally clean up the job
22 every day, got in our trucks, and just as we went to
23 take off, put our vehicles in drive and drove up the
24 driveway about ten feet and started to head out, we had
25 one vehicle in front of the driveway in front of the

1 front door, and I was heading up the hill. So virtually
2 one guy was going around the driveway this way and one
3 was going around this way.

4 Q. Let me ask you, what did you see -- what kind
5 of vehicle did you see coming down the driveway toward
6 the house?

7 A. I want to say it was an Astro van, Ford Astro
8 van.

9 Q. How many vehicles came down the driveway?

10 A. I honestly don't recall. I don't remember if
11 it was one or two. I want to say it was two. They came
12 down like this.

13 Q. It's a circular drive. Actually there's a
14 diagram of the house there. And what happened when the
15 vehicles came down the driveway?

16 A. They came down quite fast and blocked us in
17 and told us we needed to get out of the vehicles.

18 Q. Who got out of the vehicles?

19 A. We all did.

20 Q. Out of your vehicles?

21 A. Yeah.

22 Q. Who got out of the vehicles that were blocking
23 the driveway?

24 A. We all got out of the vehicles. We were told
25 to get out of the vehicles.

1 Q. Who told you to get out of the vehicles?

2 A. The marshals did.

3 Q. How do you know they were marshals?

4 A. It was pretty obvious. I mean, they had full
5 gear on. You know, they had black gear on. I don't
6 know what kind of guns they had, but I know they had at
7 least three or four of them.

8 Q. You gestured as if you were holding a rifle or
9 a long gun at port arms?

10 A. Oh, yeah. It was a semiautomatic I'm
11 guessing. I don't know much about guns, but it was an
12 assault rifle.

13 Q. That got your attention?

14 A. Oh, yeah. It would get anybody's attention.

15 Q. What did they tell you to do?

16 A. They started asking me some questions about Ed
17 Brown.

18 Q. And did you answer their questions?

19 A. I did. I asked them -- there was one new guy
20 on the job that day and they had gone over -- two guys
21 had gone over to one vehicle, and us three were in my
22 truck.

23 Q. When you say two guys had gone over to the
24 other vehicle, that's two guys from your crew?

25 A. Yes, sir. And I had asked the marshals -- you

1 know, one guy didn't know anything about this job. It
2 was his first day on the job. So he wouldn't -- he was
3 probably scared pretty well.

4 Q. What happened after that?

5 A. I answered their quirky questions, and I got
6 in the vehicle and I realized that I had forgotten my
7 materials list for the next day and it was a pretty
8 ritual thing to grab materials in the morning on the way
9 through seeing as how the lumberyard was there on the
10 way through. So I jumped out. We had already gotten
11 back in our vehicles and started taking off, realized
12 that, and I got out of my vehicle and walked back in the
13 house to grab the list of materials. Nature called and
14 I had to go to the bathroom; so I went to the bathroom
15 real quick, and just as I was coming out, one of the
16 marshals came into the house, into the dining room area,
17 and ordered me out of the house right now.

18 Q. What else did he do besides order you out of
19 the house?

20 A. Pretty much escorted me out of the house.
21 Asked me what I was doing in the house, and I explained
22 to him I was grabbing my block of wood that had the
23 materials list that was sitting on the counter in the
24 kitchen, explained to him that I had gone to the
25 bathroom, and pretty much escorted me out of the house.

1 Q. You told the jury a few moments ago that they
2 asked quirky questions. Did they want to know about
3 firearms?

4 A. They had asked me -- and they had asked the
5 other guys -- pretty much all of us were there at that
6 point together. The quirky questions were, asked me if
7 I had ever seen Ed do anything strange with guns. And
8 my answer to that question was no. Asked me if I had
9 ever seen Ed go in the woods with any guns or explosives
10 or any things. No. Asked me if I had ever seen Ed
11 display any weird actions towards the government at all.
12 Once again, no. Asked me if I had ever been in the
13 woods. I explained to them that I was there to build a
14 house. I wasn't there to poke through somebody's woods.
15 I was there to do my job and get it done and that was --
16 you know, they were just oddball questions. They were
17 just questions out of the ordinary.

18 Q. Did you want to be involved in any of this?

19 A. I don't want -- didn't want to be involved in
20 any of this, no. I think they are great people and we
21 were doing what they wanted me to do at the house and
22 was building a beautiful house and didn't think that
23 nothing would ever become of it, so that's why I carried
24 on. We all carried on.

25 Q. Came back and worked some more the next day?

1 A. Yes, sir.

2 MR. LANGE: Your witness.

3 THE COURT: Thank you, Mr. Lange. Government?

4 CROSS-EXAMINATION

5 BY MR. HUFTALEN:

6 MR. HUFTALEN: Mr. Farnsworth, good morning.

7 My name is Arnold Huftalen. I'm an Assistant United

8 States Attorney. I just have a couple questions for

9 you.

10 THE WITNESS: Sure.

11 Q. Did you know why the Deputy U.S. Marshals were

12 there that day?

13 A. I figured it out real quick.

14 Q. They didn't tell you?

15 A. They told me -- they told me -- they asked me

16 if I had realized that Ed and Elaine Brown had been

17 arrested.

18 Q. And did they tell you that they were there to

19 assist getting firearms out of the house?

20 A. I don't recall. I don't recall that.

21 Q. And did I understand your testimony to be that

22 you were asked questions outside in your vehicle in the

23 driveway area?

24 A. Yes, sir. I was asked questions twice as

25 well.

1 Q. And then you realized you forgot something, so
2 you went back in the house?

3 A. Um-hum.

4 Q. They didn't stop you from going in the house
5 though, did they?

6 A. No.

7 Q. Once you were in, one of the deputies came
8 into the house and asked you what you were doing in the
9 house?

10 A. Yeah.

11 Q. And then is it your testimony that he escorted
12 you back out of the house?

13 A. Um-hum.

14 Q. And then you left?

15 A. I proceeded to go about ten more feet in my
16 vehicle, and then I was ordered to stop my vehicle and
17 get out of my vehicle once again. I got out of my
18 vehicle and I was questioned once again as three of them
19 were surrounding me asking me what I did inside.

20 Q. On that occasion where you had just gone back
21 inside; right?

22 A. They asked me the questions of what I was
23 doing inside, yes.

24 Q. Did you understand the questions to be about
25 what you had done when you just went back in? That's my

1 question.

2 A. Yeah.

3 Q. And then after those questions were asked and
4 answered, you left?

5 A. I did. They asked me if I had taken any guns
6 or anything like that. And yes, I answered their
7 questions and moved on.

8 MR. HUFTALEN: Thank you very much. I have
9 nothing further.

10 THE COURT: Thank you, Mr. Huftalen. Mr.
11 Iacopino, any questions?

12 MR. IACOPINO: No, your Honor.

13 THE COURT: Mr. Lange?

14 MR. LANGE: I have no questions. I would ask
15 that this witness be excused. He's free to leave the
16 courthouse?

17 THE COURT: The witness is excused. Go back
18 to work.

19 MR. IACOPINO: Actually, your Honor, I do have
20 one question if I may. I'm sorry.

21 THE COURT: All right. Resume the stand. You
22 are still under oath. Mr. Iacopino, you may proceed.

23 MR. IACOPINO: I'm very sorry, Mr. Farnsworth.
24 Please sit down for the question.

25 CROSS-EXAMINATION

1 BY MR. IACOPINO:

2 Q. You indicated you worked for the Browns for a
3 couple of years building this house; is that correct?

4 A. Yeah.

5 Q. Did you start back in 2004?

6 A. I honestly don't recall the start time. I did
7 some work in his garage repairing some drywall.

8 THE COURT: Just stop. Ask another question.

9 Q. Do you recall a time or were you aware of a
10 time when Mrs. Brown's dental office in West Lebanon was
11 searched by agents of the government?

12 A. Yes, sir.

13 Q. And what sticks out in your mind about that?

14 A. They --

15 MR. HUFTALEN: I'm going to object at this
16 point on foundational grounds.

17 THE COURT: Lay a foundation that he has
18 personal knowledge.

19 A. When the government had --

20 THE COURT: Stop.

21 MR. IACOPINO: Let me ask you another
22 question.

23 Q. You talked today about an event that occurred
24 in 2006 when agents came to the house. Before that,
25 some period of time before that, were you aware of

1 government agents coming to Dr. Brown's dental office in
2 West Lebanon to search it?

3 A. Yes. I was working at his house at that point
4 and I do recall that.

5 Q. And did you in fact have the occasion to go
6 down to West Lebanon and see what was going on?

7 A. Yeah. I was going down to grab materials.

8 Q. And where were you grabbing materials?

9 A. I was at the block plant.

10 Q. And where is that in relationship to Dr.
11 Brown's office in West Lebanon?

12 A. Right above her office.

13 Q. And did you see the government agents around
14 her office?

15 A. Yes, sir.

16 Q. And did you know them to be government agents
17 by what they were wearing?

18 A. It was very obvious.

19 Q. And what else did you see?

20 A. I saw them jump out of their green Suburban.
21 I watched them crawl up the bank. I watched them
22 sniper -- lay out his assault rifles and had it aimed
23 right down the hill. As I was leaving I realized what
24 was really going on.

25 THE COURT: Stop. Ask a question.

1 Q. Did that frighten you?

2 A. Who wouldn't be frightened by that?

3 MR. IACOPINO: Thank you. I have no further
4 questions.

5 THE COURT: Thank you, Mr. Iacopino. Mr.
6 Lange, questions?

7 MR. LANGE: I'd ask that he be excused.

8 THE COURT: Does the government have --

9 MR. HUFTALEN: No further questions.

10 THE COURT: You're excused. You can go back
11 to work. Thank you. Call your next witness.

12 MR. LANGE: Susan Berge.

13 SUSAN BERGE
14 having been duly sworn, testified as follows:

15 THE CLERK: For the record, if you'd please
16 state your name and spell your name.

17 THE WITNESS: My name is Susan Berge. My last
18 name is spelled B-E-R-G-E.

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. LANGE:

22 MR. LANGE: Good morning, ma'am.

23 THE WITNESS: Good morning.

24 Q. What town and state do you live in?

25 A. I live in Burrillville, Rhode Island.

1 Q. How long have you lived in Rhode Island?

2 A. Oh, Lordy Lou. Since 1976.

3 Q. What sort of work, if any, do you do?

4 A. I write and publish a weekly stock market
5 analysis for institutional money managers here and in
6 western Europe.

7 Q. Do you know Ed and Elaine Brown, the people
8 that are seated at the table to my right?

9 A. Yes, I do.

10 Q. When did you first meet them?

11 A. I first met them I think it was late June,
12 early July of 2007.

13 Q. How did that happen?

14 A. I was sitting at work one day and part of the
15 stock report service that I have has scrolling headlines
16 at the top of the monitor and I noticed a headline that
17 said: Elderly couple in stand-off with federal
18 authorities or something, and I found that headline
19 quite intriguing. So I clicked on it and I read the
20 article, and that's how I first heard about Ed and
21 Elaine Brown.

22 Q. What did you do after seeing what you just saw
23 on the Internet?

24 A. I followed the story through local New
25 Hampshire papers and through whatever information I

1 could get on the Internet for a couple of weeks, and
2 then all of a sudden I couldn't get any more information
3 and I didn't know what happened. I was very worried
4 that perhaps --

5 THE COURT: Just stop. Ask another question.

6 MR. LANGE: You have to respond to questions.

7 THE COURT: Don't elaborate. Just answer his
8 questions. He will ask you another question.

9 THE WITNESS: All right.

10 Q. Did you drive to their home in Plainfield?

11 A. Yes, I did. One Saturday morning I decided to
12 drive up there for myself to see if they were okay.

13 Q. Do you remember what month and around what
14 date this was?

15 A. It was late June, early July of 2007 I
16 believe.

17 Q. How did you know where to go?

18 A. I didn't really. I knew the name of the town,
19 and once I got into the town, I just kept stopping at
20 little shops and antique stores and stuff and asking do
21 you know how I can get to their house.

22 Q. Did they know?

23 A. They knew.

24 Q. You got to the driveway?

25 A. Um-hum.

1 THE COURT: Is that a yes?

2 A. Yes. I'm sorry.

3 Q. Was there anything blocking your access to the
4 driveway?

5 A. No, there was not.

6 Q. Did you see anybody at the end of the
7 driveway?

8 A. No, I did not.

9 Q. You drove up the driveway?

10 A. Yes.

11 Q. What, if anything, do you remember about the
12 driveway?

13 A. It was long.

14 Q. Anything obstructing your access to the
15 driveway?

16 A. No, there was nothing. I was a little bit
17 surprised. There was nothing up there at all.

18 THE COURT: Stop. Just a second. Listen to
19 the question. Just answer the question.

20 Q. Did you see any sort of signs warning you as
21 you went up the driveway?

22 A. I don't believe I did, no.

23 Q. Did you see any physical objects which caused
24 you any type of anxiety?

25 A. No.

1 Q. Did either Ed or Elaine Brown know you were
2 coming?

3 A. No.

4 Q. Why didn't you try to contact them and let
5 them know you were coming?

6 A. Didn't occur to me.

7 Q. You had never met with them?

8 A. No.

9 Q. Had you ever communicated with them directly
10 before that day?

11 A. No, I did not.

12 Q. Did you go on up the driveway and go to the
13 house? There's a diagram there in the corner.

14 A. Yes, I drove right up so that I parked my car
15 right in the front near the front door so that they
16 could see my car and they could see who I was so they
17 wouldn't be afraid.

18 Q. Did you get out of your car?

19 A. Yes.

20 Q. Was there anybody outside when you got out of
21 your vehicle?

22 A. No.

23 Q. Approximately what time of day was this?

24 A. I think it was about 11, 11:30 in the morning.
25 I think it was late morning.

1 Q. Daylight?

2 A. Yes.

3 Q. Did you go to the door?

4 A. Yes.

5 Q. Was there anybody in the door area?

6 A. No.

7 Q. What did you do?

8 A. I either rang the doorbell or knocked, I can't
9 remember which, and Ed answered the door.

10 Q. And that would be the man seated at the second
11 table?

12 A. Yes.

13 Q. How did you know it was Ed at that point?

14 A. Because I had seen his picture on the
15 Internet.

16 Q. What did you say to him?

17 A. I said, "Mr. Brown, I've driven up from Rhode
18 Island because I've read about your case and I just
19 wanted to come up and see if you and Elaine were all
20 right."

21 Q. Did you notice any firearms when you went into
22 the house?

23 A. No.

24 Q. Did you notice whether or not Ed had a pistol
25 in his waistband?

1 A. I don't recall seeing one at that time, no.

2 Q. You came back subsequently?

3 A. I came back, yes, for the concert on the 14th.

4 Q. Did he have a pistol at that time?

5 A. I believe so, yes.

6 Q. Now, the first meeting that you had with the
7 Browns, approximately how long did that last?

8 A. Oh, it was about three hours.

9 Q. I'm not going to get into the specifics of
10 what you discussed, but did you have general
11 conversation?

12 A. Yes, we did.

13 Q. Do you remember where the conversation took
14 place?

15 A. In the kitchen.

16 Q. What, if anything, did you notice about the
17 kitchen?

18 A. It looked like any kitchen in America.

19 Q. At any point did you feel any anxiety when you
20 were there?

21 A. Driving up the driveway was the only time when
22 I felt a little anxious because I had read that there
23 were federal people in the woods and I was a little
24 scared about that, but once I got to the house and I met
25 Ed and Elaine, I was not afraid at all.

1 Q. Did you come back a week or two later to
2 attend a concert?

3 A. Yes.

4 Q. Was it basically the same situation when you
5 drove up the driveway?

6 A. Oh, there were a lot of people. There were a
7 lot of cars and there were policemen at the top of the
8 driveway. It was a very different situation from the
9 first time I went up.

10 Q. Did anybody try to stop you from going up the
11 driveway?

12 A. No, sir.

13 Q. What were the policemen doing?

14 A. I'm not really sure. I guess they were
15 probably --

16 THE COURT: Wait. Ask another question.

17 Q. What did you observe the policemen doing?
18 Don't speculate. Just describe what you saw.

19 A. I didn't observe them doing anything. They
20 were just standing there and they had police cars on the
21 road.

22 Q. They were not blocking access to the driveway?

23 A. No.

24 Q. Describe the approximate number of people who
25 were on the property for this concert.

1 A. I think there were probably about a hundred.

2 Q. Describe their ages.

3 A. There were little children, three, four, five
4 years old. There were people in their sixties and
5 seventies that were World War II veterans. It was a
6 very broad range of ages.

7 Q. Do you remember seeing anyone other than Ed
8 carrying a firearm?

9 A. No.

10 Q. Do you remember anything else about that
11 concert?

12 A. Well, it was my first exposure to a
13 helicopter.

14 Q. How so?

15 A. Well, there was a Department of Homeland
16 Security helicopter that was buzzing around all daylong.

17 Q. Now, do you know whether or not it was
18 Department of Homeland Security or is that just an
19 assumption?

20 A. No. Somebody checked the number on the
21 chopper and discovered that it was registered to the
22 Department of Homeland Security.

23 Q. That's what they told you?

24 A. Yes.

25 Q. Did you meet somebody named Randy Weaver that

1 day?

2 A. Yes, I did.

3 Q. Who is Randy Weaver?

4 A. Randy Weaver is a patriot who was in a
5 stand-off in Idaho with federal officials and his wife
6 and --

7 THE COURT: Hold it.

8 A. -- 14-year-old son were killed.

9 THE COURT: Hold it, hold it. Ma'am, you know
10 I said hold it. Don't continue after I said stop.

11 Jury will disregard that. Ask another
12 question.

13 Q. You recognized him from media?

14 A. Yes.

15 Q. And you met him?

16 A. Yes, I did.

17 Q. And how was he conducting himself that day?

18 A. Flawless gentleman.

19 Q. Did you see any sort of military type presence
20 during that concert either by the government or by
21 anybody on the Browns' property?

22 A. No, sir.

23 Q. How was the music?

24 A. The music was great.

25 Q. Now, was there a second concert that you went

1 to, or did you not go to that one?

2 A. No, I didn't go to any one after that.

3 Q. Now, later in the summer or particularly in
4 September, was there a concert that was scheduled which
5 did not happen?

6 A. That's correct.

7 Q. Did you have another meeting with the Browns
8 after that and before October 4th of 2007?

9 A. I think the last time I saw them at their home
10 was in either late August or early September.

11 Q. Why were you up in Plainfield then?

12 A. Well, I had brought my son back up to college
13 and I was on my way back to Rhode Island and I thought I
14 would swing by and say hello.

15 Q. Free access up the driveway?

16 A. Yes.

17 Q. Did the Browns know you were coming?

18 A. No.

19 Q. When you got there who was there?

20 A. Ed and Elaine.

21 Q. Anybody else that you recall?

22 A. No.

23 Q. Any firearms other than the one you've already
24 described that you saw?

25 A. No.

1 Q. Now, did you go inside the house?

2 A. No, I didn't. Ed and Elaine were in the back
3 doing some gardening.

4 Q. Had a conversation outside?

5 A. Yes.

6 Q. How did they seem?

7 A. I'm sorry?

8 Q. How did they seem, the Browns? How did they
9 appear?

10 A. They seemed fine.

11 Q. If it had been possible, would you have gone
12 back to the Browns' after October 4th, 2007? Based on
13 your contacts with them over 2007, what you saw, would
14 you have any reservations about going up there again if
15 they were there?

16 A. Oh, not at all, no.

17 MR. LANGE: Your witness.

18 THE COURT: Thank you, Mr. Lange. Government?

19 MR. HUFTALEN: Thank you.

20 CROSS-EXAMINATION

21 BY MR. HUFTALEN:

22 MR. HUFTALEN: Good morning, ma'am. My name
23 is Arnold Huftalen. I'm an Assistant United States
24 Attorney. I just have a couple questions for you.

25 THE WITNESS: Um-hum.

1 Q. It sounds as if you followed the Brown matter
2 fairly closely on the web; is that right?

3 A. I did, um-hum.

4 Q. Did you seek out web-based articles and news
5 stories about what was going on up there?

6 A. Yes. I accessed the local New Hampshire press
7 to find articles to see -- just to keep updated.

8 Q. I think in addition to the local newspapers,
9 did you say on direct you also looked at the Internet?

10 A. Yeah. Well, that's how I found the
11 newspapers.

12 Q. And when you were looking at these articles
13 about the Brown situation, did you see articles that
14 talked about the stand-off between the Browns and
15 federal authorities?

16 A. Yes.

17 Q. And did you understand when you were reading
18 those articles that the federal authorities had arrest
19 warrants for the Browns, or did you not follow it that
20 closely?

21 A. That part escaped me. I didn't -- that wasn't
22 -- I didn't pay attention to that.

23 Q. When you followed these stories, to the extent
24 you did, did you see any statements attributable to me
25 that either Mr. Brown or Mrs. Brown -- about violence

1 that might come to law enforcement?

2 MR. IACOPINO: Objection.

3 THE COURT: Basis?

4 MR. IACOPINO: Beyond the scope and --

5 THE COURT: And?

6 MR. IACOPINO: Beyond the scope, your Honor,
7 irrelevant and hearsay.

8 THE COURT: I think it's double hearsay.

9 Q. Okay. When you went up there and you drove in
10 the first time and you met with them, they were polite
11 and cordial; right?

12 A. Yes.

13 Q. And when you left, if Mrs. Brown had said to
14 you can I hitch a ride into town, what would you have
15 done?

16 A. I probably would have given her a ride.

17 Q. Did you see anybody there out at the end of
18 the driveway saying you can't bring Elaine Brown out of
19 the property today?

20 A. No.

21 Q. How about the second time you went? If she
22 had asked can you give me a ride to town, would you have
23 given her a ride?

24 A. I probably would have, yeah.

25 Q. Would the same answer apply to the third time

1 you were up there?

2 A. Yeah.

3 Q. And when you were there for the concert, did
4 you see anybody making attempts to search vehicles as
5 they left the property?

6 A. No.

7 MR. HUFTALEN: Thank you very much. Nothing
8 further, Judge.

9 THE COURT: Mr. Iacopino, questions?

10 MR. IACOPINO: No questions, your Honor.

11 THE COURT: Mr. Lange?

12 MR. LANGE: Nothing further.

13 THE COURT: Thank you. You're all done.
14 You're excused. You can go home.

15 MR. LANGE: Your Honor, the next witness I'm
16 going to attempt to do a short video. I don't know if
17 the government's seen the video, but I want to give them
18 a chance to look at it.

19 THE COURT: You haven't shown it to the
20 government?

21 MR. LANGE: They may have seen it. It's the
22 concert video. It's on my exhibit list.

23 MR. HUFTALEN: Could I speak with Mr. Lange
24 for just a moment?

25 THE COURT: Why don't you talk to him.

1 (Pause.)

2 THE COURT: Which exhibit number is that?

3 MR. LANGE: It's Defendant's 2D. It will be
4 2D-1 because I will submit it without the audio.

5 THE COURT: 2D-1, government object?

6 MR. HUFTALEN: Without audio we have no
7 objection.

8 THE COURT: You are moving for its admission?

9 MR. LANGE: Yes.

10 THE COURT: Without objection it's admitted.

11 (Defendant's Exhibit 2D-1 admitted.)

12 MR. LANGE: Call Mr. Vonkleist.

13 THE COURT: Are you going to play this at this
14 time?

15 MR. LANGE: Not yet.

16 THE COURT: The witness is who?

17 MR. LANGE: David Vonkleist.

18 DAVID VONKLEIST

19 having been duly affirmed, testified as follows:

20 THE WITNESS: I affirm.

21 THE CLERK: For the record, if you'd please
22 state your name and spell your name.

23 A. My name is Robert David Vonkleist,
24 R-O-B-E-R-T, D-A-V-I-D, V-O-N-K-L-E-I-S-T.

25 DIRECT EXAMINATION

1 BY MR. LANGE:

2 MR. LANGE: Good morning, sir.

3 THE WITNESS: Yes.

4 Q. What city and state do you live in?

5 A. I am in Wellfleet, Massachusetts.

6 Q. What sort of work do you do?

7 A. I'm a musician. I do voice-overs, and I've
8 been a broadcaster for, oh, 25 years I guess.

9 Q. I want to go back to the year 2007. In 2007
10 did you have any contact with the two defendants in this
11 case, Ed Brown and Elaine Brown?

12 A. Yes.

13 Q. When had you first met the Browns?

14 A. I believe I first met Ed and Elaine in '97. I
15 think that was the year.

16 Q. What were the circumstances?

17 A. I was traveling with my ex-wife, Joyce Riley.
18 We were trying to help veterans around the country. She
19 is a medical malpractice legal consultant, expert
20 witness, federal whistleblower. She served as a reserve
21 flight nurse --

22 MR. LANGE: Let me be very clear in this
23 trial. Please try to answer the questions.

24 A. Yes, sir.

25 Q. And the circumstances were that you were with

1 your wife traveling around the country?

2 A. Yes, we were, and we were doing free programs
3 to help inform the veterans --

4 THE COURT: Just a second. Ask another
5 question. Listen to the question. Just answer that
6 question.

7 THE WITNESS: I'm doing the best I can.

8 THE COURT: Do better. Ask another question.

9 THE WITNESS: Yes, sir.

10 Q. Where was it that you first met Ed and Elaine
11 Brown?

12 A. I believe it was at the American Legion in
13 that town.

14 Q. In Plainfield, New Hampshire?

15 A. I don't recall the name of the town. It was
16 nearby.

17 Q. Was it in New Hampshire?

18 A. Yes, sir.

19 Q. And you were traveling with your ex-wife doing
20 a show on veterans?

21 A. Yes, sir.

22 Q. And this would have been 1997?

23 A. To the best of my recollection.

24 Q. How much contact did you have with Elaine
25 Brown back at that initial meeting?

1 A. I think we were just introduced. I didn't
2 have much contact with her at the time.

3 Q. Over the next ten years, between '97 and 2007,
4 how much contact did you have with Ed Brown?

5 A. I don't believe we had any contact. I mean,
6 not that I can recall.

7 Q. How about Elaine Brown?

8 A. None, the same.

9 Q. What happened in 2007 with regard to you and
10 the Browns?

11 A. I heard about the issue with the income tax
12 and we had Elaine Brown on our radio show as a guest.

13 Q. Do you remember approximately when that was?

14 A. I would have to say I think it was in June of
15 '07.

16 Q. What was the radio show?

17 A. It's called The Power Hour.

18 Q. And is that AM? FM?

19 A. Yes.

20 Q. It's both?

21 A. AM, FM, shortwave, Internet, satellite.

22 Q. Where were you broadcasting out of?

23 A. Little town called Versailles, Missouri.

24 Q. The interviews you had were telephone
25 interviews?

1 A. Yes.

2 Q. Little bit later in June of 2007, did you
3 yourself physically come to Plainfield, New Hampshire?

4 A. Yes, I did.

5 Q. Did you go to the Brown property?

6 A. Yes, I did.

7 Q. Do you remember the approximate date that you
8 did that?

9 A. Mid to late June. I don't remember the date,
10 but it was in June, yeah.

11 Q. For what purpose?

12 A. After the interview with Elaine Brown, on the
13 suggestion of my ex-wife Joyce, she thought it might be
14 a good idea if I were to go up there and do a musical
15 concert, bring people there to bring awareness to the
16 situation that the Browns were facing.

17 Q. Who set up that concert?

18 A. I don't think it was anybody that really set
19 it up. We just called and said, hey, if I show up and
20 play some guitar, would you mind? They said, no, that
21 would be great. Put the word out, bunch of people
22 showed up. It was like a picnic.

23 Q. When you went up the driveway to the Brown
24 property, were there any obstructions?

25 A. No, a couple cars parked there, but no

1 obstructions.

2 Q. Was there any military police presence?

3 A. No.

4 Q. How about on the Brown property itself? Did
5 you see anybody with firearms?

6 A. No.

7 Q. Did you play at that first concert?

8 A. Yes, I did.

9 Q. Now, do you have a -- I don't know how to
10 describe it -- I suppose a particular mode of dress when
11 you are giving a concert?

12 A. I suppose my trademark has become red, white,
13 and blue and I've got, I don't know, a dozen or so red,
14 white, and blue stars and bars shirts.

15 MR. LANGE: Sir, may I approach?

16 THE COURT: Of course.

17 Q. I'm going to show you an exhibit in this book
18 here, Government's Exhibit 34a-3 for identification.

19 A. Um-hum.

20 Q. Do you recognize the person there?

21 A. Yes.

22 MR. LANGE: I move to put Government's Exhibit
23 34a-3 into evidence.

24 MR. HUFTALEN: No objection.

25 THE COURT: Admitted.

1 (Government's Exhibit 34a-3 admitted.)

2 THE COURT: Go ahead, Mr. Lange. Do you want
3 that displayed?

4 MR. LANGE: I do, please.

5 THE COURT: All right. It's on the panels,
6 members of the jury.

7 Q. You can see the screen?

8 A. Um-hum.

9 Q. How long did you remain at the Brown property
10 for that concert?

11 A. I was there for the afternoon and I believe we
12 stayed for a barbecue afterward. Some people put some
13 hamburgers on if I recall. I was there for the
14 afternoon.

15 Q. Approximately how many people were there for
16 your performance?

17 A. I don't know. I would have to say probably 40
18 or 50.

19 Q. Was there a second concert later, some weeks
20 later?

21 A. Yes, there was.

22 Q. Who set that concert up, if you know?

23 A. I don't know who set that one up.

24 Q. You came back for that concert?

25 A. Yes. I was invited.

1 Q. Any problems getting up the driveway?

2 A. No. I mean, there were a few more cars.
3 There were more people in attendance for this one.

4 Q. How many?

5 A. How many what?

6 Q. How many people attended?

7 A. I would probably say a hundred, hundred or
8 more. I wasn't really paying attention.

9 Q. Did you play at that concert?

10 A. Yes, I did.

11 Q. Was that the principal thing you did at that
12 concert or did you do something else?

13 A. Yes, I did something else.

14 Q. What was that?

15 A. I had a video camera, and because of the
16 tension that appeared to be rising in the situation, we
17 were video -- live streaming on the Internet.

18 MR. LANGE: Your Honor, I'm going to offer
19 into evidence, I believe by agreement, Government's --
20 I'm sorry, Defendant 2D-1.

21 THE COURT: That's already in I think.

22 MR. LANGE: Thank you.

23 Q. See your monitor, sir?

24 A. Um-hum.

25 Q. What is the jury looking at right at that

1 point?

2 A. That's a band called Poker Face. Paul Topete
3 is in the center playing guitar, and people -- you can
4 see behind it. They had a fire and there was food out
5 there and people milling about.

6 Q. Where was that stage set up?

7 A. It was right on the parking area in front of
8 the house.

9 Q. In front of the Brown house?

10 A. Yes.

11 MR. LANGE: If you could play it without the
12 audio, please.

13 (Playing video.)

14 Q. And you're the person who's holding the camera
15 that's taking these images?

16 A. I had the camera on a tripod.

17 Q. And this is simply a portion of it. Why did
18 you pan back at that point?

19 A. Because if you look, there's a helicopter
20 right there. The helicopter was hovering and scaring a
21 lot of people. Sometimes it flew as low as I would say
22 not more than two or 300 feet, less than a football
23 field. At one point I thought it was going to hit the
24 wind generator, the windmill. And it was unnerving, it
25 was intimidating, and I felt that it was pointless, as

1 did everybody else.

2 MR. LANGE: I'm just going to run this to the
3 end. It's not going to take very long.

4 Q. Approximately what time of day was this?

5 A. This helicopter hovered, like I said, it
6 seemed to be like for a good four or five hours. As I
7 recall -- please don't hold me to it, but as I recall,
8 it started somewhere around three in the afternoon and
9 it went until after dark. Again, please don't hold me
10 to the times. It was for many hours and it did go until
11 dark.

12 Q. You can see the lights on the helicopter?

13 A. Yes. It was dusk. And you can see how close
14 it was to the tower right there with the windmill.

15 (Pause.)

16 A. Breaks my heart.

17 Q. And that's a longer shot of the home?

18 A. Yes. This is what our country has come to.

19 THE COURT: Wait just a second, please.

20 THE WITNESS: I'm sorry. It broke my heart.

21 THE COURT: Hold it. Stop, please. Wait for
22 a question. Mr. Lange?

23 Q. Did you have contact with the Browns at the
24 second concert?

25 A. Yes, I saw them several times. I apologize.

1 I'm sorry.

2 Q. Was Ed --

3 MR. LANGE: There are tissues on the counter.

4 Q. Was Ed carrying a pistol in his waist?

5 A. I did see him at one time carrying a pistol on
6 his waist. I don't remember watching for it.

7 Q. How about Elaine? Did you see her at any time
8 with any sort of a firearm?

9 A. No, I did not.

10 Q. At either of the concerts were there firearms?

11 A. I didn't see any.

12 Q. Did you go inside that building there
13 depicted -- the Brown home during either of your visits
14 to the property?

15 A. Yes, I did.

16 Q. Which floor did you go on?

17 A. Main floor.

18 Q. And did you see anything there out of the
19 ordinary?

20 A. Nothing.

21 Q. Did you see anything inside the house that
22 caused you any sort of alarm?

23 A. None whatsoever.

24 Q. There are objects on the table behind that
25 monitor on the far wall. There are also firearms on the

1 table. You may not be able to see it. You may have to
2 stand, closer to the deputy's work area. Did you see
3 anything like that at the Brown property at either of
4 those concerts in the summer of 2007?

5 A. No, I did not. I saw nothing of the sort.

6 Q. Did you hear anyone make any threats during
7 your times at the concerts, threats toward anybody?

8 A. Not that I recall.

9 Q. Did you come to any assessments as to the
10 situation with regard to the Browns' perception of what
11 they were facing?

12 A. Would you rephrase it? I'm sorry.

13 Q. It's a terrible question. Did they in any way
14 indicate to you any fear of anything when you met with
15 them face to face?

16 A. I believe that they were in fear for their
17 physical safety given what had happened.

18 MR. HUFTALEN: Objection.

19 THE COURT: Sustained. Jury will disregard.

20 Q. Your understanding is that they were in fear
21 for their safety?

22 A. Yes.

23 Q. And that was based on what you observed in the
24 situation?

25 A. In answer to what we just observed with the

1 helicopter flying over. I mean, that type of activity
2 would strike fear in anybody, including me, and it
3 should strike fear into the heart of every single
4 American in this country to see where we've gone in this
5 country.

6 MR. LANGE: Those are my questions.

7 THE COURT: Thank you, Mr. Lange. Government,
8 any questions?

9 MR. HUFTALEN: No.

10 THE COURT: Mr. Iacopino, questions?

11 MR. IACOPINO: No questions, your Honor.

12 THE COURT: Thank you. You may step down.
13 You're excused. Call your next witness.

14 THE WITNESS: God save us all. God save us
15 all.

16 THE COURT: Take the exhibit down.

17 MR. HUFTALEN: May we approach?

18 THE COURT: Of course.

19 AT SIDE BAR

20 THE COURT: Yes?

21 MR. HUFTALEN: Judge, I don't know if you
22 heard it, but I think the jury did because at our table
23 we did. As that witness walked by he said to the jurors
24 twice, "Save us all, save us all."

25 THE COURT: All right. Is that correct?

1 Anyone hear that?

2 MR. HUFTALEN: I heard him say God bless you,
3 too.

4 THE COURT: I'm going to have to inquire of
5 the jury.

6 IN OPEN COURT

7 THE COURT: Hold that witness, please.

8 MR. LANGE: Do you want Mr. Bernier off the
9 stand?

10 THE COURT: Yes, please step down. Ladies and
11 gentlemen of the jury, during the last witness's
12 testimony as he was leaving -- this is just a raise your
13 hand issue. Did any of you hear him say anything as he
14 walked by you?

15 (Show of hands.)

16 THE COURT: All right. I'm going to excuse
17 the jury. Don't discuss anything that you may have
18 heard.

19 (Jury left courtroom.)

20 THE COURT: I'll see counsel. We're in
21 recess.

22 IN CHAMBERS

23 THE COURT: The record will indicate
24 approximately half the jurors indicate they heard the
25 witness say something to them as he was leaving.

1 Counsel have any suggestions how I ought to deal with
2 this? Government?

3 MR. HUFTALEN: I think you should instruct the
4 jury that they should disregard any remarks made by the
5 witness as he walked by and take no further action with
6 respect to this trial. I'm not asking for a mistrial.

7 MR. LANGE: I concur.

8 THE COURT: Mr. Iacopino?

9 MR. IACOPINO: I think we should just ignore
10 it. I don't even think we should raise it with them and
11 should just go on.

12 THE COURT: Counsel, do you want me to ask the
13 jury what they heard?

14 MR. LANGE: I do not.

15 THE COURT: Mr. Lange no. Mr. Iacopino?

16 MR. IACOPINO: No, your Honor.

17 MR. HUFTALEN: No, your Honor.

18 THE COURT: I want everyone to understand
19 there may be a waiver issue here as far as the defense
20 is concerned, serious waiver.

21 MR. IACOPINO: I will run it by my client,
22 your Honor, but I don't think there will be a change in
23 the position.

24 MR. LANGE: I will talk to Mrs. Brown.

25 THE COURT: My concern is that a deliberate

1 suggestion to the jury is contemptuous, and to deal with
2 that contemptuous conduct, if it existed I need to know
3 what the jury heard. I'm going to bring in each member
4 of the jury separately and ask what they heard and I
5 will deal with it as required.

6 MR. LANGE: I object, your Honor.

7 THE COURT: Tell me why you object.

8 MR. LANGE: I think it would unduly emphasize
9 it. I think that the law says the jurors are presumed
10 to follow instructions. I think if they are told to
11 disregard that parting shot as the witness walked in
12 front of them, they will do so.

13 THE COURT: Do you believe that the Court
14 shouldn't deal with someone that attempts to influence
15 the jury during the course of the trial?

16 MR. LANGE: If the Court is going to do that,
17 I would ask that that be done at the conclusion of the
18 trial after verdict rather than highlighting it at this
19 point.

20 MR. IACOPINO: I would join in that request,
21 your Honor.

22 THE COURT: In the meantime your witness is
23 where?

24 MR. LANGE: Wherever you want him to be. He
25 left the stand. If you want him to remain, there's a

1 process that he can be brought before the Court and
2 counsel can be appointed.

3 THE COURT: All right. I will think about it.

4 MR. HUFTALEN: His conduct is not only
5 contemptuous. It is more likely than not a violation of
6 Title 18, Section 1503(a) in that it appears that he
7 corruptly endeavored to influence or impede the
8 administration of justice, which is a felony.

9 THE COURT: All right. I'll think about it.
10 Take your break.

11 (Recess taken.)

12 IN CHAMBERS

13 THE COURT: All right. I'm going to bring the
14 jurors in. Bring in the first juror. Only the ones
15 that say they heard something.

16 MR. IACOPINO: I understand you are going to
17 voir dire them, your Honor?

18 THE COURT: Anybody want to do this in the
19 courtroom? We're in chambers now.

20 MR. LANGE: I think we should do it in the
21 courtroom.

22 THE COURT: Mr. Iacopino?

23 MR. IACOPINO: I guess we should do it in the
24 courtroom, your Honor.

25 THE COURT: Because?

1 MR. IACOPINO: I think because it's part of a
2 public proceeding.

3 THE COURT: Government's position?

4 MR. HUFTALEN: No position.

5 THE COURT: We're going to do it here. Hi.
6 Sit down, please. Your juror number?

7 JUROR NO. 1: One.

8 THE COURT: Did you hear Mr. Vonkleist say
9 something just as he passed the jury?

10 JUROR NO. 1: Yes, I did.

11 THE COURT: What did you hear him say?

12 JUROR NO. 1: What I heard was, "Save us all,
13 save us all," repeated twice as he went by the jury box
14 exiting from the stand.

15 THE COURT: I'm going to instruct you to
16 disregard that. It's to have no impact on your
17 proceedings and not to discuss what you heard with any
18 other juror. Can you do that?

19 JUROR NO. 1: Yes, sir.

20 THE COURT: All right. Thank you very much.
21 Questions anyone?

22 MR. HUFTALEN: No, your Honor.

23 MR. IACOPINO: I have one question, your
24 Honor.

25 THE COURT: Yes?

1 MR. IACOPINO: Did he say it out loud or did
2 he say it under his breath?

3 JUROR NO. 1: It was very audible, to myself
4 anyway.

5 THE COURT: Thank you very much.

6 (Pause.)

7 THE COURT: Have a seat. Your juror number?

8 JUROR NO. 2: Two.

9 THE COURT: Did you hear Mr. Vonkleist say
10 anything as he passed the jury?

11 JUROR NO. 2: Yes, I did.

12 THE COURT: What did you hear?

13 JUROR NO. 2: I heard him say, "Save us all."

14 THE COURT: Did you have any trouble hearing
15 that?

16 JUROR NO. 2: No.

17 THE COURT: I'm instructing you to disregard
18 that. That's to have no impact on your deliberations
19 and don't discuss it with the other jurors. Can you do
20 that?

21 JUROR NO. 2: I can.

22 THE COURT: Thank you very much. Anyone else?

23 ALL: No, your Honor.

24 THE COURT: Thank you very much.

25 (Pause.)

1 THE COURT: Have a seat. Your juror number
2 is?

3 JUROR NO. 3: Three.

4 THE COURT: Juror No. 3, did you hear Mr.
5 Vonkleist say anything as he passed the jury?

6 JUROR NO. 3: Yes, I did.

7 THE COURT: What did you hear, sir?

8 JUROR NO. 3: Save yourselves.

9 THE COURT: And how many times did you hear
10 that said?

11 JUROR NO. 3: Once.

12 THE COURT: And I'm going to instruct you that
13 you are to disregard that just as I've done in other
14 occasions and not discuss that with any of the other
15 jurors. Can you do that?

16 JUROR NO. 3: Yes.

17 THE COURT: Very good. Thank you. Any
18 questions?

19 ALL: No, thank you.

20 THE COURT: All right. Thank you very much.
21 Go have your snack.

22 (Pause.)

23 THE COURT: Have a seat. Your juror number?

24 JUROR NO. 5: Five.

25 THE COURT: Juror No. 5, did you hear Mr.

1 Vonkleist say anything as he passed the jury?

2 JUROR NO. 5: What I recollect was that he
3 said something about "God help us" and then I couldn't
4 hear the rest of it.

5 THE COURT: I'm instructing you to disregard
6 that and not discuss it with the other jurors, have no
7 part in your deliberations. Can you do that?

8 JUROR NO. 5: Yes, sir.

9 THE COURT: Thank you very much.

10 JUROR NO. 5: Thank you.

11 (Pause.)

12 THE COURT: Have a seat. Your juror number?

13 JUROR NO. 6: Six.

14 THE COURT: Juror No. 6, did you hear Mr.
15 Vonkleist say anything as he went by the jury rail?

16 JUROR NO. 6: Yes.

17 THE COURT: What did you hear?

18 JUROR NO. 6: I heard "God save us all."

19 THE COURT: And how many times did you hear
20 that said?

21 JUROR NO. 6: I heard him say it when he was
22 getting up off the stand. He said, "God save us."

23 THE COURT: And if I were to instruct you to
24 disregard that just as I have other things and to have
25 it play no part in your deliberations and you're not to

1 discuss it with the other jurors at all, can you do
2 that?

3 JUROR NO. 6: Yes.

4 THE COURT: Thank you very much. Counsel,
5 feel free to jump in if you have a question anytime.

6 (Pause.)

7 THE COURT: Have a seat. Your juror number?

8 JUROR NO. 7: Seven.

9 THE COURT: And did you hear Mr. Vonkleist say
10 anything as he went by the jury?

11 JUROR NO. 7: I heard him mumbling and I
12 thought I heard something about power. That's about
13 all.

14 THE COURT: If I were to order you to
15 disregard that and to not discuss it with the other
16 jurors, can you do that?

17 JUROR NO. 7: Absolutely.

18 THE COURT: Thank you very much.

19 (Pause.)

20 THE CLERK: That's it, your Honor.

21 THE COURT: Counsel have any other requests in
22 this regard?

23 MR. LANGE: No, your Honor.

24 THE COURT: Mr. Iacopino?

25 MR. IACOPINO: No requests, your Honor.

1 THE COURT: Government?

2 MR. HUFTALEN: Government does not.

3 THE COURT: What I'm going to do is I'm going
4 to let Mr. Vonkleist go and consider additional issues
5 with regard to Mr. Vonkleist, but I see no reason we
6 can't proceed with the trial. Anyone object to that?

7 MR. HUFTALEN: Government does not.

8 MR. LANGE: No, your Honor.

9 MR. IACOPINO: No, your Honor.

10 THE COURT: I hear no objections. We're going
11 back in.

12 BEFORE THE JURY

13 THE COURT: Call your next witness. Come
14 right up to the front if you could.

15 DAVID HATCH-BERNIER
16 having been duly sworn, testified as follows:

17 THE CLERK: For the record, if you'd please
18 state your name and spell your name.

19 A. David Hatch Bernier, D-A-V-I-D,
20 H-A-T-C-H-B-E-R-N-I-E-R.

21 DIRECT EXAMINATION

22 BY MR. LANGE:

23 Q. David, could you please tell the jury where
24 you live? What city?

25 A. I live in Worcester, Massachusetts.

1 Q. How long have you lived there?

2 A. Three and a half years.

3 Q. What is your profession?

4 A. I'm an architect.

5 Q. How long have you been an architect?

6 A. I graduated from the Boston Architectural
7 College in 2005. So four years.

8 Q. Do you know the woman seated at the table to
9 my right in the black jacket?

10 A. Yes.

11 Q. Who is she?

12 A. She's my mother, Elaine Brown.

13 Q. As an architect and as her son, were you asked
14 to get involved in the design of the home in Plainfield?

15 A. I was.

16 Q. What were you asked to do?

17 A. They gave me criteria, what they wanted in a
18 house, and I did some sketches. We went back and forth
19 and made some changes and came up with a design that
20 they liked and that was buildable.

21 Q. Sir, did you bring something with you when you
22 came up to Concord this morning?

23 A. I did.

24 Q. What did you bring?

25 A. I brought the first and second floor plans and

1 a rendered elevation of the proposed house.

2 Q. Were these drawn before the house was built?

3 A. Yes.

4 Q. The house as built, does it conform completely
5 to this sketch?

6 A. Not completely, but the design intent is still
7 there.

8 MR. LANGE: Your Honor, I offer Defendant's
9 2P.

10 THE COURT: Any objections?

11 MR. HUFTALEN: No objection.

12 THE COURT: Admitted without objection, 2P.

13 (Defendant's Exhibit 2P admitted.)

14 Q. David, approximately when was it that you did
15 the sketch that I've laid in front of you?

16 A. This was in early to mid-2004. I was still in
17 college at the time.

18 Q. Probably one of the first designs you actually
19 had done and that was going to be built?

20 A. Correct.

21 Q. What was the intent? What was the intent of
22 the building?

23 A. The intent was -- well, two things. They
24 wanted a house that was Mediterranean in design, a lot
25 of stucco, a lot of bright open spaces on the interior

1 of the building. The second criteria was that the
2 building impact the environment as little as possible.
3 We used green technologies, eco-friendly building
4 materials, a lot of concrete, heavily insulated walls, a
5 lot of big, bright open spaces on the interior. It was
6 oriented to the south to maximize passive solar gain.

7 Q. Was security any consideration in the layout
8 of the plan?

9 A. Somewhat, yes. The house is in a very remote
10 location. If they had any type of alarm system, if the
11 alarm went off, nobody would hear it. So you need to be
12 able to store your possessions safely and sleep well at
13 night.

14 Q. As of October of 2007 when the Browns were
15 arrested, was the house complete?

16 A. No.

17 Q. I want to turn to the summer of 2007. Did you
18 go up to the property to visit your mother?

19 A. Several times, yes.

20 Q. Did you go inside the house?

21 A. Yes.

22 Q. How long did you remain?

23 A. Anywhere from two to four hours at the most, I
24 think.

25 Q. Social meeting?

1 A. Yes, and also to check on the progress of the
2 construction.

3 Q. Can you give me your best estimate of the date
4 of that visit?

5 A. The last visit would have been I believe
6 mid-September of 2007.

7 Q. Did you go all through the house or did you
8 stay on the first floor?

9 A. I went all through the house.

10 Q. Did you see anything there that caused you
11 alarm?

12 A. No. It was surprisingly calm and normal.

13 Q. Do you recall whether or not there were any
14 firearms? Did you see any firearms?

15 A. I didn't see any stored in the house. I
16 assumed that some of the people on the property may have
17 had some, but I can't confirm that for sure.

18 Q. The last time before October 4th of 2007 that
19 you were there was approximately September?

20 A. Yes.

21 Q. Was there an earlier time that summer?

22 A. Yes.

23 Q. Did you visit twice?

24 A. Probably maybe another three weeks prior to
25 that.

1 Q. Situation the same as the second visit?

2 A. Pretty much.

3 Q. Nobody blocked your way up the driveway or
4 back down the driveway?

5 A. No, not at all.

6 MR. LANGE: Those are my questions.
7 Government witness.

8 THE COURT: Thank you. Government, questions?

9 MR. HUFTALEN: Yes, very briefly.

10 CROSS-EXAMINATION

11 BY MR. HUFTALEN:

12 Q. Mrs. Brown was living with you before she went
13 back to Plainfield in '07; is that right?

14 A. Correct.

15 Q. In fact, you were ordered by the Court to be
16 her guardian so to speak; right?

17 A. Correct, yes.

18 Q. And did she speak with you about her desire to
19 go back and live with her husband, Mr. Brown?

20 MR. IACOPINO: Objection. This is beyond the
21 scope of direct examination.

22 MR. LANGE: As do I.

23 THE COURT: Overruled. Go ahead.

24 A. She expressed feelings that she missed her
25 husband, but there was never any talk about actually

1 leaving the house and going up there.

2 Q. Let's make it clear. You didn't bring her
3 back to the house; correct?

4 A. I was in Washington, D.C. on business that
5 weekend.

6 Q. When she was living with you, you understood
7 that she had been convicted in this courthouse of tax
8 crimes; correct?

9 A. Correct.

10 MR. IACOPINO: Objection, irrelevant.

11 THE COURT: Overruled.

12 Q. Yes?

13 A. Yes.

14 Q. Was it apparent to you that she knew that she
15 had been convicted?

16 MR. IACOPINO: Objection, speculation,
17 irrelevance.

18 THE COURT: Overruled.

19 A. Yes.

20 Q. Did you know that at least in October of 2007
21 your mother was sleeping in a bed less than ten feet
22 away from more than twenty pipe bombs?

23 A. No, I did not.

24 Q. Did you know that in her bedroom, in addition
25 to the stuffed animals, there were multiple weapons

1 including a 50-caliber rifle?

2 MR. IACOPINO: Objection, your Honor. His
3 knowledge about this is irrelevant.

4 THE COURT: Overruled.

5 MR. HUFTALEN: He's testified that he's been
6 there.

7 Q. Did you know --

8 A. No.

9 Q. -- that there was a 50-caliber rifle in her
10 bedroom?

11 A. No, I did not.

12 Q. A 308 rifle?

13 A. I've never even held a gun. I really don't
14 approve of them myself. I can't tell a pistol from a
15 machine gun.

16 Q. Fair enough. On each of the times when you
17 visited your mother, did anybody attempt to stop you
18 from leaving the property?

19 A. No.

20 Q. Had she asked you for a ride to go back to
21 your house, would you have given her a ride?

22 A. After she left my house?

23 Q. Yes, sir.

24 A. I -- honestly I don't know how to answer that.
25 I don't think she ever would have. She was so happy to

1 be back home.

2 Q. My question is if she had asked you, would you
3 have offered to give her a ride? Not talking about
4 whether she would, just if she did.

5 MR. IACOPINO: Objection, calls for
6 speculation, your Honor.

7 THE COURT: If you're just speculating, say
8 so.

9 A. I certainly would be speculating. I never
10 even --

11 THE COURT: That's it. Far enough.

12 MR. HUFTALEN: That's fine.

13 Q. Did you know that your mother carried
14 firearms?

15 A. No, I didn't.

16 MR. HUFTALEN: I have nothing further, Judge.
17 Thank you.

18 THE COURT: Thank you. Mr. Iacopino,
19 questions?

20 CROSS-EXAMINATION

21 BY MR. IACOPINO:

22 Q. What was the view like from the Brown
23 residence in Plainfield?

24 A. After the addition was built, it was amazing.
25 You could see for miles.

1 Q. Is that why there was an observation deck
2 built onto the house?

3 A. Yeah. Actually for Christmas I was going to
4 be giving them a telescope to enjoy the view. It was
5 all about the view, and we also built that tower
6 partially hollow on the inside to take some of the
7 breezes, again, using green technology into the house.

8 MR. IACOPINO: Thank you. No further
9 questions.

10 THE COURT: Thank you. Mr. Lange?

11 MR. LANGE: Nothing further.

12 THE COURT: Thank you. You may step down.
13 Call your next witness.

14 MR. LANGE: I need to speak briefly to my
15 client.

16 (Pause.)

17 MR. LANGE: Your Honor, I have one exhibit
18 that I don't think has come into evidence. I've shown
19 it to the government. It's Defendant's 2E-5. I offer
20 that. It's a summary of phone calls.

21 MR. HUFTALEN: I've seen that before. No
22 objection, your Honor.

23 THE COURT: It's admitted without objection.

24 (Defendant's Exhibit 2E-5 admitted.)

25 MR. LANGE: With respect to Elaine Brown's

1 case, we rest.

2 THE COURT: Okay. Ladies and gentlemen of the
3 jury, I will have to excuse you for a moment. Don't
4 discuss the case.

5 (Jury left courtroom.)

6 BEFORE THE COURT

7 THE COURT: Be seated. Mr. Lange, I will be
8 talking to your client.

9 Mrs. Brown, if you could stand, please. Your
10 counsel indicates by resting that you would not be
11 testifying; is that correct?

12 MRS. BROWN: That's correct.

13 THE COURT: You have your constitutional right
14 to testify. I want you to know that if you do testify,
15 it will be under oath subject to penalties of perjury,
16 subject to cross-examination without your ability to
17 raise Fifth Amendment privilege. Do you understand?

18 MRS. BROWN: Yes, sir.

19 THE COURT: You have a constitutional right
20 not to testify, and if you decide not to testify, I will
21 on request instruct the jury that they can draw no
22 negative inference from the fact that you did not
23 testify. Mr. Lange is very experienced in these
24 matters. You should listen carefully to his advice, but
25 ultimately the decision is yours. Do you understand

1 what I've told you?

2 MRS. BROWN: Yes.

3 THE COURT: Without telling me what your
4 lawyer has said to you, have you had time to discuss
5 with your attorney this issue and receive his advice
6 with regard to testifying?

7 MRS. BROWN: Yes.

8 THE COURT: And is it your decision not to
9 testify?

10 MRS. BROWN: Yes, it is.

11 THE COURT: Thank you. Mr. Lange, you will
12 indicate if you wish a jury instruction with regard to
13 the non-inference.

14 MR. LANGE: Yes, I do.

15 THE COURT: All right. We'll put that in. Is
16 the government going to have any additional witnesses?

17 MR. HUFTALEN: No, your Honor.

18 THE COURT: All right. I will bring the jury
19 in.

20 MR. LANGE: Your Honor, do I do a Rule 29 now
21 or do I do that later?

22 THE COURT: I want the jury to hear the last
23 of everyone resting. Then I will excuse the jury.
24 We'll hear your motions, and then we will set some times
25 for a charge conference and ultimate arguments.

1 Bring the jury in, please.

2 THE CLERK: Yes, your Honor.

3 BEFORE THE JURY

4 THE COURT: Mr. Lange, you've rested?

5 MR. LANGE: Yes, we've rested.

6 THE COURT: Government rests?

7 MR. HUFTALEN: Government rests.

8 THE COURT: Mr. Iacopino?

9 MR. IACOPINO: We've rested, your Honor.

10 THE COURT: All right. Ladies and gentlemen
11 of the jury, that indicates that there will be no
12 additional evidence in this case. Everyone has rested.
13 That doesn't mean it's time to start making up your mind
14 because you haven't heard closing arguments. Closing
15 arguments, as you remember, are not evidence, but it's
16 important to listen carefully to closing arguments
17 because the lawyers give you views with regard to how to
18 deal with the evidence, and you haven't heard my
19 instructions on how to deal with the issues of law. So
20 keep an open mind.

21 What I'm going to do now is I need to talk to
22 the lawyers about the jury instructions, etc. So I'm
23 going to excuse you. It may be at least an hour before
24 I bring you back, at which point I anticipate unless
25 things change that you will be hearing closing arguments

1 from counsel. And we'll see where we go from there
2 depending on the time. Bear with me. We'll just see
3 where we are. We'll either give you instructions today
4 or tomorrow. I will see how much time is involved.

5 Again, don't discuss this case or anything
6 else I've instructed you not to discuss. Jury's
7 excused.

8 (Jury left courtroom.)

9 BEFORE THE COURT

10 THE COURT: All right. Rule 29 motions. Mr.
11 Iacopino?

12 MR. IACOPINO: Thank you, your Honor. At this
13 point in time on behalf of Mr. Brown I would move under
14 Rule 29 to dismiss Counts 1, 2, 3, 7, 9, and 10 of the
15 indictment. I would set forth with respect to Counts 9
16 and 10 -- those are the counts dealing with failure to
17 appear for trial under 18 USC, Section 3146, and failure
18 to appear for sentencing under the same statute. I
19 would respectfully submit to the Court at this point in
20 time there is no evidence upon which this jury -- a
21 rational jury could find that Mr. Brown was ever ordered
22 to come to trial on the day that he did not show up or
23 to return to trial by a court, that there is nothing in
24 I believe it's Exhibit 1a-1 that in any way -- I'm
25 sorry, 1a-2 that in any way provided notice, and I would

1 draw your attention to the wording of the statute, 18
2 USC, Section 3146. Penalty for failure to appear, says
3 whoever having been released on this chapter knowingly
4 fails to appear before a court as required by the
5 conditions of release.

6 Conditions of release that Mr. Brown had do
7 not specifically indicate that he was required to appear
8 on that third or fourth day of trial, whenever it was
9 that he was not present, to appear.

10 There is no order in evidence, and it may be a
11 peculiarity of the practice in this district, it may not,
12 but there is no written piece of paper that says the
13 defendant must appear for his trial. And the same goes
14 for sentence, your Honor. There has been no evidence
15 submitted, no piece of paper submitted, no order of this
16 Court or the District of New Hampshire court.

17 THE COURT: One second.

18 (Pause.)

19 THE COURT: Go ahead. I'm sorry.

20 MR. IACOPINO: There's been no order submitted
21 to this Court that demonstrates that Mr. Brown was
22 required to appear by court order for a sentencing date,
23 and on those grounds, your Honor, I respectfully move to
24 dismiss Counts 9 and 10 of the indictment pursuant to
25 Rule 29 of the Rules of Criminal Procedure.

1 THE COURT: Thank you, Mr. Iacopino. Mr.
2 Lange? Did you have something else?

3 MR. IACOPINO: I had four other counts I was
4 going to move to dismiss, your Honor.

5 THE COURT: Go right ahead.

6 MR. IACOPINO: With respect to Counts 1, 2, 3,
7 and 7, your Honor, I would renew my Rule 29 motion that
8 I made at the close of the government's case. With
9 respect to those counts, particularly with respect to
10 Count 1, Count 2, and Count 3, as I indicated
11 previously, those counts are all essentially seeking to
12 sanction the same basic conduct, and I'd respectfully
13 submit that there is not sufficient evidence for a
14 rational juror to find beyond a reasonable doubt at this
15 point, your Honor, that either of the defendants
16 undertook to knowingly and willfully conspire and agree
17 with each other to prevent by force, intimidation, and
18 threat employees of the government in the discharge of
19 their official duties, your Honor.

20 And with respect to Count 3 -- I'm sorry, 7,
21 which is the felon in possession count, as I indicated
22 previously, your Honor -- I'm sorry, Count 3 is the
23 possession. I keep saying possession of a firearm by a
24 felon. What I mean to say, your Honor, is carrying and
25 possessing a firearm during and in relation to a crime

1 of violence, your Honor. That count by its own wording
2 is necessitated upon a conviction on Counts 1 and 2. I
3 respectfully submit that because Counts 1 and 2 are not
4 substantiated by the evidence, that Count 3 must fail as
5 well, and for those reasons, your Honor, we move that
6 Counts 1, 2, 3, 7, which is the obstruction of justice
7 charge, 9 and 10, all be dismissed under Rule 29.

8 THE COURT: Thank you very much. Mr. Lange?

9 MR. LANGE: Pursuant to Rule 29 I move for
10 directed verdicts of acquittal on all counts charging my
11 client, Elaine Brown. Particularly, I move for
12 judgments of acquittal with regard to Count 1, Count 2,
13 Count 3, Count 4, Count 6, Count 8, Count 11.

14 I particularly want to address Counts 1 and 2
15 and also 3, which is to some degree contingent on those
16 first two counts. I submit in particular that the
17 government has failed to meet its burden to prove the
18 material element in those counts: My client possessed,
19 either constructively or to a Pinkerton liability, a
20 destructive device as defined by the federal criminal
21 code. I stand by my objection. The government has
22 failed to prove each and every material element as to
23 all the counts charging my client.

24 THE COURT: Thank you. Government?

25 MR. HUFTALEN: The government's position is

1 that the evidence hasn't gotten worse for the government
2 since the close of the government's case, at which point
3 the Court denied the Rule 29 motions, and I would submit
4 briefly that the ruling should be the same.

5 With respect to the first two counts, the
6 conspiracy counts, there's ample evidence in the record
7 from which a jury could infer reasonably that Mrs. Brown
8 was involved in a conspiracy, whether it was spoken or
9 unspoken as I'm sure your instructions will include.
10 With respect to the Pinkerton liability, it is I submit
11 beyond for adventure in this case, that it was
12 reasonably foreseeable to Mrs. Brown that her husband
13 would possess and carry those destructive devices and
14 other firearms during and in commission of violent
15 crimes, which are Counts 1 and 2.

16 With respect to the 922(g) felon in possession
17 counts, again, there is no doubt the defendants were
18 each convicted in this court of tax crimes. They were
19 both on bail conditions, which are part of the evidence
20 which specifically required that they not possess
21 firearms. Each of them was in possession of a firearm
22 on the day they were arrested, October 4, 2007, and the
23 evidence is ample with respect to firearms in their
24 house and in their possession actively and
25 constructively for a number of months before that.

1 With respect to the obstruction of justice
2 counts, 1503(a) I also submit that there is more than
3 ample evidence to get to the jury the theory that the
4 defendants corruptly endeavored to influence and impede
5 the due administration of justice, and that is, the
6 administration of justice in their original tax case.
7 They both refused to come for their sentencing to impede
8 that case. Mr. Brown in particular refused to attend
9 the trials and didn't come back after the third day of
10 evidence.

11 With respect to all of the counts, it's the
12 government's position that there is not only a prima
13 facie case made out with respect to each of the
14 elements, but the evidence is overwhelming as to each
15 element of each count as to each defendant. Thank you.

16 THE COURT: Motions are denied. Anything else
17 before we recess? Mr. Lange, do you want to make a
18 motion under Petrozziello?

19 MR. LANGE: I'm sorry, yes, I do. I move that
20 the statements that were admitted de bene against my
21 client be stricken and not submitted to the jury on the
22 grounds that the government has not met its burden under
23 the Petrozziello case to show that those statements were
24 made during the course of the conspiracy and that they
25 were in furtherance of that conspiracy.

1 THE COURT: Thank you. You join, Mr.
2 Iacopino?

3 MR. IACOPINO: I do, your Honor. In
4 particular, I would point to the statements that the
5 government attributes to Jason Gerhard at the Lebanon
6 Police Department and the statements attributed to
7 Daniel Riley and Cirino Gonzalez.

8 THE COURT: Thank you. During the course of
9 these proceedings, I have conditionally admitted certain
10 statements made by alleged co-conspirators according to
11 the procedure approved by the First Circuit in United
12 States versus Ciampaglia, 628 Fed 2d, 632. Having heard
13 all of the evidence, I now find that the government has
14 proven by a preponderance of the evidence that a
15 conspiracy existed and that the defendant and the stated
16 co-conspirators who made the statements were members of
17 the conspiracy at the time the challenged statements
18 were made.

19 I further find that the government has proven
20 by a preponderance of the evidence that the challenged
21 statements were made in furtherance of the conspiracy.
22 These findings are based at least partially on evidence
23 other than the challenged statements themselves.
24 Therefore, in accordance with the procedures set forth
25 in United States versus Petrozziello, 548 F.2d in 20 and

1 pursuant to 801(d)(2)(E), I'm now fully admitting the
2 statements made by these co-conspirators that I
3 conditionally admitted earlier in the proceedings.

4 All right. Counsel, I will have for you
5 proposed jury instructions in about five minutes. They
6 will be delivered down here in the courtroom.
7 Fifteen minutes after you receive them, I will have a
8 charge conference in my chambers. To the extent anyone
9 needs any additional time, let me know. Anything else
10 before we adjourn?

11 MR. HUFTALEN: No, thank you.

12 THE COURT: All right. We're in recess.

13 IN CHAMBERS

14 THE COURT: All right. We're with counsel in
15 chambers for a charge conference. Counsel has received
16 previously copies of the proposed final jury
17 instructions along with jury verdict forms relating to
18 each defendant. Counsel has indicated they are ready
19 for the charge conference. Counsel is present.

20 For the government, any objections?

21 MR. HUFTALEN: No.

22 THE COURT: Any additions?

23 MR. HUFTALEN: No.

24 THE COURT: Jury verdict form is okay?

25 MR. HUFTALEN: Fine.

1 THE COURT: Mr. Lange?

2 MR. LANGE: Yes, I have objections. First of
3 all, I want to state that I would request as I did in
4 the proposed jury instructions at the beginning of the
5 trial an instruction on the defense of justification.

6 THE COURT: The Lahey defense?

7 MR. LANGE: Yes. I know the Court's going to
8 deny that.

9 THE COURT: For the record, Lahey's 473 F.3d,
10 401. Go ahead.

11 MR. LANGE: I understand that that will be
12 denied.

13 THE COURT: Well, tell me why you think it's
14 appropriate. I'm not going to just deny it out of hand,
15 but I look at the criteria, and in my view defendant has
16 to be an -- under an unlawful and present threat of
17 death or serious bodily harm, and it's an objective test
18 in my view, and I say that because the Lahey test is
19 based on the Dickson decision and several others that
20 seem to indicate an objective criteria, including U.S.
21 versus Holliday, 457 F.3d, 121.

22 MR. LANGE: Your Honor, with respect to
23 Elaine, as I recall the testimony, there is no
24 indication that she herself had a firearm prior to the
25 Danny Riley episode. My position is that the Danny

1 Riley episode gave her reason to believe that the
2 government was going to use serious force or possibly
3 lethal force to arrest her. I submit that that's
4 unlawful because of the case law that says that it's not
5 lawful to use -- for the government -- for law
6 enforcement to use lethal force to arrest someone for a
7 non-dangerous offense. At that point it was dangerous.

8 THE COURT: I don't see any objective
9 reasonableness here. Your note that the footnote in
10 Lahey by Judge Selya indicates that Lahey may not even
11 be applicable when law enforcement is involved.

12 MR. LANGE: Our position is that it should be
13 applicable because this was a home and that given what
14 occurred on and after June 7, 2007, the instruction
15 should be given.

16 THE COURT: Thank you. I also don't find that
17 the defendant does not meet the criteria of not
18 recklessly placing herself in a situation where she
19 would be forced to engage in criminal activity. Both of
20 them were there and could have surrendered anytime.
21 Also don't meet the criteria that there was no
22 reasonable legal alternative but to engage in their
23 conduct. They could have surrendered, and they also
24 don't meet the fourth criteria.

25 Lahey is a case which is quite unusual, and

1 under these circumstances what the defendants are
2 requesting is that if the defendants have a subjective
3 view that a government agent who has a valid arrest
4 warrant and wants to arrest them, they have a right to
5 engage in self-defense against that government agent. I
6 don't think that's the law, and it's certainly not the
7 law in my view here that Lahey applies. I want the
8 record to be clear. Your request is on the record.
9 Anything else, Mr. Lange?

10 MR. LANGE: Yes, your Honor. I submit that
11 the objective test under Wood apply here. I'm arguing
12 that not Elaine Brown's subjective state. There's no
13 evidence at this point what that was, but my position is
14 that someone in Elaine Brown's position, given the show
15 of force that the government did on June 7th, would have
16 reason to believe that they were under a threat of death
17 or serious bodily injury from unlawful force.

18 THE COURT: Even if that were true, she
19 doesn't meet the other criteria, and they are in the
20 conjunctive, and in my view, again, I don't believe that
21 any rational person would have believed that throughout
22 that period of time. Just a second.

23 MR. HUFTALEN: In addition, to the cases that
24 you've referred to your Honor, I think there is some
25 language in Holt, which is at 464 F.3d, 101, page 107,

1 which is a felon already in possession by someone who's
2 been committed. I think it gives insight into the
3 circuit's thinking with respect to the objective
4 standard, and it says: Conceivably, extraordinary cases
5 might arise where voluntary possession would exist in a
6 literal sense, and yet Congress could not have intended
7 the statute to apply. We imagine a felon who snatches a
8 loaded gun out of the hand of a five-year-old or a felon
9 who wrestles a gun from an armed intruder and promptly
10 surrenders possession after the intervention. In such a
11 case if the government were foolish enough to prosecute,
12 some caveat might indeed be needed, e.g., an instruction
13 on necessity or a justification defense, but nothing
14 like that is present in this case.

15 I think it certainly isn't explicit, and I'm
16 not saying that it states that the circuit's position is
17 that it's an objective standard, but I think the circuit
18 went out of its way to say if in the future -- and this
19 is an '06 case which predates Lahey. I think the
20 circuit was saying there are some very limited
21 circumstances in which this justification defense might
22 apply in a 922(g) case, and what they give are objective
23 observations as opposed to a subjective analysis by the
24 person holding the gun.

25 THE COURT: All right. Go ahead, Mr. Lange.

1 I'm sorry to interrupt.

2 MR. LANGE: Yes. My second concern is with
3 regard to the lesser included offense. I submitted last
4 night a proposed jury instruction on the lesser included
5 offense with regard to Count 3, the 924(c) count. My
6 position -- and I think it's afforded by Castillo, a
7 Supreme Court case cited in my paper, and O'Brien, the
8 First Circuit case.

9 THE COURT: Just a second. Let me get it.

10 (Pause.)

11 THE COURT: This is what you filed yesterday?

12 MR. LANGE: It is.

13 THE COURT: Let the record reflect that the
14 deadline for requested jury instructions were some time
15 ago, and this instruction was not filed until yesterday
16 evening.

17 MR. LANGE: That's correct.

18 THE COURT: All right. Go ahead.

19 MR. LANGE: And the reason it wasn't filed
20 until yesterday evening is I had to get authority from
21 my client to request it. I respect deadlines. I don't
22 treat them lightly, but I don't think that Elaine's
23 defense should be prejudiced because of lapses on my
24 part. If there's a sanction, it should be imposed on
25 me, not on her. I think the law supports the lesser

1 included offense.

2 THE COURT: Count what?

3 MR. LANGE: Count 3. As I read the Castillo
4 and O'Brien cases, they appear to say under 18 U.S. Code
5 924(c), the nature of the firearm is an element of the
6 offense.

7 Admittedly those were not destructive device
8 cases. Those were, at least Castillo, a machine gun
9 case. My recollection is in Castillo, the Supreme Court
10 said that the nature of the firearm, a machine gun, was
11 an element because it raised the mandatory minimum
12 offense from 5 to 30 years. By analogy the same
13 principle should be applied here. It makes a big
14 difference in this case to Elaine Brown as to whether
15 she's accountable for a firearm as defined in 18 U.S.
16 Code 921 or a destructive device as defined.

17 I take no issue with the Court's proposed jury
18 instruction on the definitions of the offenses, but my
19 concern is that the jury could well find that my client
20 was accountable under the Pinkerton theory or
21 conspiratorial theory for the firearms, and there would
22 be no way to know whether they considered the lesser
23 offense or the offense of destructive device. I think
24 it's two separate offenses --

25 THE COURT: Let me interrupt you. Take a look

1 at the jury form.

2 MR. LANGE: I like the jury form, your Honor.

3 THE COURT: I do have a separate question
4 asking them to determine whether that's a destructive
5 device.

6 MR. LANGE: I know, your Honor, but it's not
7 incorporated in the instructions. If the jury has a
8 reasonable doubt as to whether or not the government's
9 proven destructive device, they should then consider the
10 lesser. I understand that to be the state of the law in
11 lesser included offenses.

12 THE COURT: But I'm asking them by virtue of
13 the jury verdict form to make a special finding with
14 regard to whether it's a destructive device. In other
15 words, they have to first find that it was a firearm,
16 and second, they would have to go on and find whether or
17 not it was a destructive device.

18 MR. LANGE: I may be mistaken or I didn't see
19 that.

20 MR. IACOPINO: He's talking about the form.

21 THE COURT: Look at Question 3 and then
22 Question 4.

23 MR. LANGE: I understand the form, but there
24 is no instruction as to the order of deliberation.

25 THE COURT: I think the jury form indicates

1 they go from question to question. I understand what
2 you're saying, but I think I've covered it. I'm not
3 indicating agreement or disagreement, but I am asking
4 the jury specifically to make a -- for instance, on
5 Question 3 they have to determine whether or not she was
6 using or possessing a firearm, and then it says proceed
7 to Question 4. Question 4 asks them to determine
8 whether or not that was a destructive device.

9 MR. LANGE: I understand, your Honor. I stand
10 by my request for the deliberation order. I think it's
11 clearer that way. It was a hard one to write, and I
12 understand what the form says and I certainly am glad
13 there's that distinction there between firearms and
14 destructive devices, but I don't think it's made clear
15 to the jury that if they convict as to Question 4, they
16 needn't reach Question 3.

17 My next argument will probably not prevail. I
18 know the state of law --

19 THE COURT: That's not the way to tee it up.

20 MR. LANGE: I'm asking the Court to go where I
21 do not believe federal courts have gone recently. I
22 understand defendants are not entitled to a
23 nullification instruction. If I thought they were, I
24 would ask for one on behalf of my client. But the very
25 next to the last page, page 25, talks about if they have

1 a conclusion that the guilt has been established beyond
2 a reasonable doubt, they should find the defendant
3 guilty. I certainly agree with that. But what I would
4 urge the Court to do is to rewrite the second sentence
5 in the next to the last paragraph on page 25 so that it
6 reads that: If on the other hand the government does
7 not in your view establish the guilt of defendant beyond
8 a reasonable doubt, you may.

9 I think the jury has the discretion to return
10 a verdict of not guilty if they feel that's a just
11 verdict, and I think the language should be tailored to
12 permit that.

13 THE COURT: I'm not going to do that.
14 Anything else, Mr. Lange?

15 MR. LANGE: No, your Honor.

16 THE COURT: Mr. Iacopino?

17 MR. IACOPINO: Your Honor, I object to the
18 lack of a justification instruction contained in these
19 instructions on the same basis that Mr. Lange did on
20 behalf of Mr. Brown.

21 I would also point out that I believe that
22 there is in fact evidence in the record through my
23 client's testimony going back to 2004 his fear that the
24 government was trying to kill him and a basis for that
25 fear, and I think that the appropriate view of whether

1 this is subjective or objective should be left to the
2 jury to determine whether or not that fear was
3 objective. In other words, whether a reasonable person
4 would -- based upon the evidence they have heard from
5 his testimony and through some of the cross-examination,
6 whether the jury would find that a reasonable person
7 would have that view, and I think that's where the
8 objective-subjective standard comes, and I think that
9 also meets the Court's other position that they somehow
10 put themselves into this position recklessly. I believe
11 under Lahey is the reference.

12 I believe that there is in evidence -- and it
13 may not be abundant, but there is in evidence through my
14 client's testimony his stated fear that the government
15 was trying to kill him from even before the tax trial
16 began, and I think that that is some evidence which
17 entitles us to this theory of the defense instruction,
18 and I would join for the other reasons laid out by Mr.
19 Lange, but also for those reasons I think in this record
20 there is in fact evidence of the -- evidence upon which
21 the justification instruction should be given by the
22 Court.

23 THE COURT: Your request is denied.

24 MR. IACOPINO: Secondly, your Honor, in your
25 proof beyond a reasonable doubt instruction on page 3

1 and 4, your Honor, I note that the second sentence of
2 the instruction you go on to say: The government does
3 not -- that the government is not required to prove
4 guilt beyond all possible doubt. Proof beyond a
5 reasonable doubt is sufficient to convict. I understand
6 that. Then the final paragraph of that particular
7 instruction goes on to say that a reasonable doubt does
8 not mean a mere possibility that the defendant may not
9 be guilty, nor does it mean a fanciful or imaginary
10 doubt, nor one based upon groundless conjecture. It
11 means a doubt based on reason.

12 And I'm concerned because basically what you
13 do here is you tell them everything that a reasonable
14 doubt is not, and based upon that, your Honor, I believe
15 that it has a one-sided effect that tends to make a
16 reasonable doubt a harder thing for them to achieve than
17 is required under the law, and for that reason I would
18 request one of two things, your Honor. Either that
19 sentence in that last paragraph be omitted or that the
20 Court give -- I think some of this language may have
21 actually come from this charge, a charge that was
22 authored by Judge Souter when he was on the New
23 Hampshire Supreme Court called state versus Wentworth,
24 and that charge, although it contains some of that same
25 language, is a little more complete I think.

1 And if you are going to instruct on reasonable
2 doubt or tell the jury what reasonable doubt is not, I
3 would ask that the Court give the following instruction:
4 A reasonable doubt is just what the words would
5 ordinarily imply. The use of the word "reasonable"
6 means simply that the doubt must be reasonable rather
7 than unreasonable. It must be a doubt based on reason.
8 It is not a frivolous or fanciful doubt, nor is it one
9 that can be easily explained away. Rather, it is such a
10 doubt based upon reason as remains after consideration
11 of all the evidence that the state has offered against
12 it. The test that you must use is this. If you have a
13 reasonable doubt as to whether the state has proved any
14 one or more of the elements of the crime charged, you
15 must find the defendant not guilty. However, if you
16 find the state has proved all of the elements of the
17 offense charged beyond a reasonable doubt, you should
18 find the defendant guilty.

19 That's the full Wentworth charge insofar as
20 any definition of reasonable doubt. I understand the
21 law in the First Circuit is that they prefer that
22 reasonable doubt not be defined because it is a term
23 that the First Circuit, as I understand the cases,
24 believes that jurors can understand, but I'm just
25 concerned that when we halfway defined it by telling

1 them what it's not, that we make it that much more of an
2 unachievable --

3 MR. LANGE: I don't think you mean to say
4 unachievable. I think what you mean to say is that you
5 are reducing the burden of proof which is properly on
6 the government. With that modification, I join in the
7 argument.

8 THE COURT: The language I've used in the
9 pattern instruction was previously approved multiple
10 times by the circuit. I deny that request. Anything
11 else?

12 MR. IACOPINO: Yes, your Honor. I do have a
13 question for you, and this is more in the portion of
14 your instructions that involve how they are going to
15 deliberate on page 9. I understand not wanting to have
16 the firearms in the jury room and allowing them a
17 process if there's any that they want to see. Will we
18 be notified when they do that?

19 THE COURT: Anytime they ask for a note, you
20 will be notified. Any note that's received, I will give
21 that -- notice of that note to counsel.

22 MR. IACOPINO: Okay. Thank you. I just
23 wanted to know because I've been involved in trials
24 where things are brought in and --

25 THE COURT: If I get a note from the jury, you

1 are going to know about it. I tell them in these
2 instructions, if you want to communicate with me, you
3 have to do it in writing.

4 MR. IACOPINO: So there won't be just a
5 bailiff assigned to them. They knock on the door, can
6 you bring us this or that.

7 THE COURT: They are told any communication
8 with me has to be in writing. Court people are aware of
9 that.

10 MR. IACOPINO: Your Honor, I'm going to
11 object -- I know it's been approved by the First Circuit
12 in the past, but I'm also going to object, page 23, the
13 partial Allen charge given to the jury. There's been no
14 indication that the jury's not going to be able to reach
15 agreement, and I understand that that portion of the
16 charge has been approved from prior cases and our state
17 court as well, but I would object on the record on the
18 basis that I think that it forces jurors to come to
19 agreement when they might not on their own -- on the
20 basis of their own review of the evidence and the law as
21 presented to them to come to agreement.

22 MR. LANGE: I join.

23 THE COURT: That's refused. Go ahead.

24 MR. IACOPINO: And then on page 14, this may
25 sound like wordsmithing and I don't mean to wordsmith.

1 Page 14 is the possession during a crime of violence
2 charge. What I'm going to ask you to do is in the
3 subparagraph marked second right at the bottom of the
4 page, I'm going to ask if you can tie that subparagraph
5 specifically to Counts 1 and 2.

6 The way I understand Counts 3 and 4 to be
7 charged is they are -- they allege that the crime of
8 violence during which the possession is related to is
9 Counts 1 and 2 of the indictment. I'm just -- I think
10 it's very important that that be hammered home with the
11 jury because if they do acquit on Counts 1 and 2, then
12 Count 3 necessarily or Count 4 for each defendant, would
13 necessarily go by the wayside. So I would ask that you
14 specify in that subparagraph that the crime of violence
15 must be Counts 1 and 2, because there are other crimes,
16 for instance, Count 3, obstruction of justice, or the
17 possession of the firearm, neither one of those would
18 support -- the possession of a firearm by a felon,
19 neither one of those would support a conviction under
20 Counts 3 and 4.

21 THE COURT: All right. I think it's
22 adequately covered in the instruction.

23 MR. HUFTALEN: It's also covered in the jury
24 verdict form where they are instructed if they find not
25 guilty on 1 and 2, skip 3 and 4.

1 THE COURT: It is. All right. What else?

2 MR. IACOPINO: I believe that's all I have,
3 your Honor.

4 THE COURT: Any objection to the verdict form?

5 MR. IACOPINO: No, your Honor, I don't have
6 any objection.

7 THE COURT: Okay then. I propose that we'll
8 start closings -- jury have a chance to eat?

9 THE CLERK: We ordered lunch for 1:30, your
10 Honor.

11 THE COURT: Good. We are going to start
12 closings at one. Jury will eat. We'll take a break
13 right after the first closing and proceed to the second
14 closing. Who's doing second closing? Mr. Lange. Third
15 closing will be Mr. Iacopino, then 15 minutes. Did I
16 say one hour yesterday or an hour and a quarter?

17 MS. OLLILA: You said an hour and a quarter.

18 THE COURT: That's fine. We'll go an hour and
19 a quarter. Everyone has an hour and a quarter,
20 15-minute rebuttal.

21 MR. IACOPINO: Judge, is it your intention to
22 get in all the closings today?

23 THE COURT: We'll do all the closings and I
24 intend to instruct.

25 MR. LANGE: Your Honor, I apologize. I do

1 have a problem with the deliberation form.

2 THE COURT: Go ahead. Educate me.

3 MR. LANGE: I'm sorry I missed it. I
4 understand now the highlighted deliberation order, if
5 you will, at the bottom of the first page, but -- bottom
6 of page one of the jury verdict form.

7 THE COURT: Looking at Elaine's?

8 MR. LANGE: Yes. It says -- it doesn't give
9 them the option of -- they go -- assuming they convict
10 her on the first two counts, they go to the third count.
11 They go to firearm, and then they -- oh, I see. So then
12 if they go to Question 4, in other words, they can find
13 her guilty of the firearm, then not guilty of the
14 destructive device.

15 THE COURT: Exactly right.

16 MR. LANGE: I understand. I apologize.

17 THE COURT: Exactly right. That's what I
18 think you were discussing before. That's okay. You're
19 tired. You people have worked very, very hard.

20 MR. IACOPINO: What about vice versa on that
21 though?

22 THE COURT: I think it's the correct order.
23 All right. Everybody understand what we're doing? No
24 one's going to do any arguments that I've excluded.

25 MR. LANGE: Your Honor, I will not be arguing

1 the Tax Code. I will not be arguing justification. I
2 wish I could.

3 THE COURT: No nullification obviously.

4 MS. OLLILA: I do talk very briefly about
5 Pinkerton theory of liability. I've never practiced
6 before your Honor.

7 THE COURT: We have the Pinkerton theory in
8 the instructions.

9 MS. OLLILA: I know that, but I don't know
10 whether you have a problem with prosecutors talking
11 about jury instructions.

12 THE COURT: You are free to argue that you
13 will see in the instructions, or I anticipate you will
14 see in the instructions. You are free to do that.
15 Anybody have any questions about argument? I'm pretty
16 easygoing. If there is an objection I will deal with
17 it.

18 MR. HUFTALEN: No questions. My memory is
19 rebuttal and rebuttal only.

20 THE COURT: Remember, no personal views as to
21 truth, no golden rule.

22 MR. LANGE: No, the golden rule's out. We're
23 Old Testament here. We're not New Testament.

24 THE COURT: All right. One o'clock. Be
25 ready.

1 (Recessed at 12:30 p.m.)

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C E R T I F I C A T E

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I, Diane M. Churas, do hereby certify that the

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foregoing transcript is a true and accurate

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transcription of the within proceedings, to the best of

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my knowledge, skill, ability and belief.

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Submitted: 12/1/09

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/s/ Diane M. Churas _____
DIANE M. CHURAS, LCR, CRR

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